



# **U.S. Merit Systems Protection Board**

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## **APR-APP for FY 2017 - 2019**

**FY 2017 Annual Performance Report (APR)**

**and**

**Annual Performance Plan (APP) for  
FY 2018 (Final) and FY 2019 (Proposed)**

**February 12, 2018**

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## Foreword

The U.S. Merit Systems Protection Board (MSPB) submits this annual performance report and annual performance plan (APR-APP), which combines the annual performance report for FY 2017 with the annual performance plan for FY 2018 (Final) – FY 2019 (Proposed), as required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA). It also contains information about cases involving whistleblowers pursuant to the Whistleblower Protection Enhancement Act of 2012 (WPEA, see Appendix A), and appeals processing as required by Title 5 of the United States Code (U.S.C.) section 7701(i)(1).

Since January 8, 2017, MSPB has lacked a quorum of Board members, which has prevented it from issuing decisions on petitions for review and other cases at headquarters, and from issuing reports of merit systems studies. Despite these restrictions, MSPB has continued to carry out its functions to the maximum extent possible. Details of our performance and how the lack of a quorum has effected our performance are contained in the body of this document.

The APR-APP contains information about MSPB including its origin in relation to civil service history; role and functions; scope of responsibility; organization and structure; and how it brings value to the merit systems, Federal agencies, the workforce, and the public. It also provides information about the Merit System Principles and Prohibited Personnel Practices. The APR-APP contains the annual performance report for FY 2017 comparing actual results to performance targets including prior year results for comparative purposes. It also contains: final goals, measures, and targets for FY 2018 and proposed targets for FY 2019, along with explanatory information on changes; an overall summary of the external trends and internal management challenges that have affected or may continue to affect MSPB's performance; and information about performance measurement and program evaluation.

The APR-APP has been prepared in accordance with guidance provided by the Office of Management and Budget and other sources. The APR-APP was prepared by Government employees in accordance with the GPRAMA. The APR-APP is available on the MSPB website at [www.mspb.gov](http://www.mspb.gov).

We invite customers and stakeholders to send comments to improve the APR-APP to:

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**U.S. Merit Systems Protection Board**  
**Annual Performance Results for FY 2017**  
**Annual Performance Plan**  
**for FY 2018 (Final) and FY 2019 (Proposed)**

## **Introduction**

A highly qualified, diverse Federal workforce managed under the Merit System Principles (MSPs), and in a manner free from Prohibited Personnel Practices (PPPs) is critical to ensuring Federal agency performance and service to the public. The MSPs are good management practices that help ensure that the Federal Government is able to recruit, select, develop, maintain, and manage a high-quality workforce and thereby reduce staffing costs and improve organizational results for the American people. The PPPs are specific proscribed behaviors that undermine the MSPs and adversely impact the effectiveness and efficiency of the workforce and the Government. The Merit Systems Protection Board's (MSPB) fundamental function is to ensure that the Federal workforce is managed in a manner consistent with the MSPs and protected from PPPs.

MSPB has been without a quorum of Board members since January 8, 2017. The lack of a quorum prevents the Board from issuing petitions for review (PFR) and other decisions at headquarters (HQ) and issuing final reports of merit systems studies. In addition, the lack of a quorum prevents MSPB from promulgating regulations for Congressional changes in our jurisdiction and processes. The lack of a quorum prevented us also from assessing or rating the Fiscal Year (FY) 2017 results for several performance goals and one strategic objective. Nonetheless, we continue to strive in every way possible to function within those limitations. For instance, the Board's administrative judges (AJs) continue to adjudicate appeals, conduct hearings, and issue initial decisions. The Board continues to receive PFRs challenging the AJ's decisions and to draft recommended final orders in those cases. The Acting Chairman continues to review and vote on those cases, which await the new Board members' arrival. MSPB continues to conduct surveys, do research on the merit systems, and draft new reports that will be subject to review and approval by the new Board members. The Board's executive, financial, and administrative operations also continue to function. As a result, the Board continues to further its critical mission during this time of significant transition.

This APR-APP contains performance goals, measures, and targets for the strategic and management objectives defined in MSPB's Strategic Plan for FY 2018-2022 (Draft). The APR includes final performance results for FY 2017, final performance targets for FY 2018, and proposed targets for FY 2019. For clarity in tracking results, the contents of Table 1, a Summary of FY 2017 results, are worded and numbered as they were in the final APP for FY 2017 published in May 2017. Otherwise, the contents of this document are organized to align with the updated APP for FY 2018 – FY 2019. This means that wording and numbering for strategic objectives, management objectives, and performance goals in the performance framework, in Table 2, and in the section on Comprehensive Performance Results and Plans, do not necessarily match the wording and numbering in Table 1.

## **Summary of Results and Critical External and Internal Issues**

Highlights of MSPB's recent results, and its most significant external factors and internal management challenges are presented here. Complete performance results are provided in the section on [Comprehensive Performance Results and Plans](#). More information about external factors and internal management challenges is provided in the section on [Trends and Challenges that May Affect Agency Performance](#).

**Accomplishments in FY 2017.** MSPB exceeded three of its strategic objectives, met or partially met seven of its strategic or management objectives, and did not rate one objective. Because MSPB lacks a quorum of Board members, the Board cannot issue decisions at headquarters (HQ) or release reports of merit systems studies. Therefore, MSPB could not rate at least one performance goal under the objectives for adjudication, conducting studies of the Federal merit systems, and reviewing the Office of Personnel Management (OPM). Thus, these strategic objectives were only partially met in FY 2017. The strategic objective for enforcement of MSPB decisions, and its single performance goal, also were not rated due to the lack of a quorum. Notwithstanding the lack of a quorum, MSPB exceeded its target for MSPB cases left unchanged by the Court of Appeals for the Federal Circuit (CAFC), processed 98 percent of cases filed the regional and field offices before October 1, 2016, and implemented an automated process to obtain feedback from its adjudication and alternative dispute resolution (ADR) customers. MSPB also exceeded the target for publishing newsletters and ‘Noteworthy’ articles, published one study report, achieved the target for conducting surveys to support merit systems studies, and published the 2016 MSPB Annual Report, which contained a review of OPM’s 2016 significant actions.

MSPB exceeded the three strategic objectives related to advancing the public interest through education and promotion of stronger merit systems that adhere to MSPs, and prevent PPPs. MSPB’s work was cited hundreds of times in a wide variety of online and print sources. MSPB exceeded the target for number of outreach events in which MSPB staff presented information to a wide range of audiences. MSPB exceeded the targets for number of visits to selected pages on its website and for the number of educational materials posted on its website. Educational materials included an important ‘Noteworthy’ article focused on educating readers about reasonable cause to use indefinite suspensions in situations when employees have been involved in potentially criminal behavior.

MSPB met all of its four management objectives. Results for the employee competency, diversity, inclusion, and engagement performance goals were within the targeted range. MSPB achieved the targets for average percent of positions vacant for each month, and for progress on e-Adjudication. MSPB made progress on stabilizing its information technology (IT) infrastructure and met the performance goals related to internal and external IT customer service and availability and reliability of IT systems, hardware, and applications. MSPB also met its target for employee and workplace safety and security.

**Significant External Trends and Issues.** Significant external trends affecting MSPB’s mission include recent and proposed changes to law and jurisdiction, retirement eligibility of the Federal workforce, and potential budget and workforce changes in FY 2018 and beyond, including Governmentwide Reorganization.<sup>1</sup> In addition, although it is discussed in this document as an internal management challenge, it is important to note that the lack of a quorum of Board members is an issue that is beyond the control of MSPB, so could also be considered an external factor. More information about these trends and issues may be found in the section [Trends and Challenges that May Affect Agency Performance](#).

In addition to changes made by the FY 2016 National Defense Authorization Act (NDAA), the NDAA for FY 2017 made several other human resources (HR) management changes, some of which apply Governmentwide. In 2017, Congress enacted the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (AWPA), amended the Whistleblower Protection Enhancement Act (WPEA) by the “Follow the Rules Act,” and authorized, for the first time, that when the Board lacks a quorum, a single Board member may extend Office of Special Counsel (OSC) stay requests. More recently, Congress enacted the Dr. Chris Kirkpatrick

<sup>1</sup> Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce (OMB Memorandum M-17-22), April 12, 2017.



Whistleblower Protection Act of 2017. Workforce reductions in selected agencies may begin in FY 2018 and beyond in relation to the Administration's Government reform efforts. Budget and workforce changes could involve furloughs, reductions in force (RIFs), or early retirements through Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP). In certain circumstances, cases involving all of these matters are appealable to MSPB. Finally, the number of Federal employees eligible to retire, and the number of employees being added to the retirement rolls, are also increasing.

These changes could impact the merit systems, management of the workforce, and/or MSPB functions or operations directly or indirectly. For example, legislative, demographic, budget, and workforce changes could increase MSPB's appeals workload, increase the complexity of cases it adjudicates, reduce the timelines for processing appeals, or require changes in MSPB adjudication procedures. The changes also emphasize the importance of continued focus on our merit systems studies and OPM review functions to help ensure the workforce is managed under the MSPs and free from PPPs. MSPB will continue to track these external factors and identify and assess their potential impact on MSPB's operations, mission, and resource requirements.

**Significant Internal Management Challenges.** MSPB's greatest internal management challenges include human capital issues, ensuring a stable and viable IT infrastructure to support its mission and administrative functions, and effective implementation of IT modernization initiatives. MSPB will consider these management challenges in its efforts to address the Office of Management and Budget (OMB) guidance on Government Reorganization.

Chairman Susan Tsui Grundmann's term ended on March 1, 2016, and she continued to serve in a one-year hold-over period until her resignation as a Board Member and Chairman, effective January 7, 2017. Pursuant to [5 U.S.C. § 1203\(c\)](#), Member Mark A. Robbins assumed responsibility and authority for all functions vested in the Chairman effective January 8, 2017. On January 23, 2017, President Donald J. Trump designated Mark A. Robbins as the Board's Vice Chairman. With two Board vacancies, MSPB lacks a quorum, which is preventing it from issuing decisions in PFRs and other cases at HQ (although PFRs may still be filed with the Board) and issuing reports of merit systems studies. Long-standing delegations authorized by Title 5 of the U.S. Code allow MSPB administrative judges (AJs) in the regional and field offices to continue hearing appeals and issuing initial decisions. In addition, appellants in these actions may exercise their right to appeal directly to the CAFC, appeal discrimination (or mixed) cases to district courts or the Equal Employment Opportunity Commission (EEOC), or possibly appeal whistleblower cases to other U.S. Circuit Courts of Appeal under the WPEA.<sup>2</sup> Thus, MSPB's adjudicatory processes, albeit truncated, continue. The lack of a quorum also prevents MSPB from promulgating regulations in response to the AWPA and other changes to its jurisdiction and process.

MSPB has been able to restore its staffing levels after recovering from years of budget shortfalls. These additional employees supported the adjudication of tens of thousands of furlough appeals, and helped ensure we had a pool of new attorneys to support succession planning and prepare for the future. Even with this staff increase, approximately 22 percent of MSPB employees, including nearly 27 percent of MSPB's permanent AJs and managers involved in initial appeals, are eligible to retire in

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<sup>2</sup> The WPEA, and later the All Circuit Review Extension Act, previously provided that appellants could file petitions for judicial review of Board decisions in whistleblower reprisal cases with the U.S. Court of Appeals for the Federal Circuit or any circuit court of appeals of competent jurisdiction. The provision that provided for judicial review of whistleblower claims by any circuit court of appeals expired on December 27, 2017. Given the provision's expiration, appellants who raised claims of reprisal for whistleblowing disclosures and/or protected activities under 5 U.S.C. § 2302(b)(8) or (b)(9)(A)(i), (B), (C), or (D) who wish to challenge the Board's rulings on their whistleblower claims now must file any request for judicial review with the Federal Circuit. As of this writing, we do not know whether Congress will renew the provision that provided for judicial review of Board decisions by any circuit court of appeals or if Congress will otherwise change the law.

the next two years. If no significant increases in workload occur, MSPB must be able to retain its Full-time Equivalent (FTE) level in FY 2018 and beyond to perform its statutory functions effectively and efficiently.

MSPB needs to shift from paper to electronic appeals processing (internally and externally) and electronic records management to improve efficiency and customer service. The e-Adjudication initiative will yield important improvements in efficiency, but will require a significant initial and sustained investment of resources. MSPB's long-term ability to conduct surveys to support merit systems studies requires obtaining an automated, web-based, survey capability that provides flexibility in survey design and administration and works securely in a cloud-based environment. We also must ensure a secure environment for storing and processing workforce data. The Office of Information Resources Management (IRM) now has two overarching goals: (1) improving the stability and reliability of our IT environment; and (2) modernizing our core business applications and migrating our data center to the cloud.

## About MSPB

**A Merit-based U.S. Civil Service.** Briefly reviewing the history of our Federal civil service is helpful in understanding the origin and purpose of MSPB. Until the early 1880s, the Federal civil service was a patronage or "spoils system" in which the President's administration appointed Federal workers based on their political beliefs and support of his campaign, rather than on the employee's suitability and qualifications to perform particular Federal jobs.<sup>3</sup> Over time, this practice contributed to an unstable Government workforce lacking the necessary qualifications to perform its work, which in turn adversely affected the efficiency and effectiveness of the Government and its ability to serve the American people. The patronage system continued until President James A. Garfield was assassinated by a disgruntled Federal job seeker who felt he was owed a Federal job because he supported the President's campaign. A public outcry for reform resulted in passage of the Pendleton Act in 1883. The Pendleton Act created the Civil Service Commission (CSC), which monitored and regulated a civil service system based on merit and the use of competitive examinations to select qualified individuals for Federal positions. Congress later enacted the Lloyd-LaFollette Act of 1912, which provided that a civil servant could only be removed for such cause as promoted the efficiency of the service. Subsequent laws and regulations authorized the CSC to review the procedures used to remove civil servants and the validity of the reasons for removal. These developments contributed to improvements in Government efficiency and effectiveness by helping to ensure that a stable, highly qualified Federal workforce, free from partisan political pressure, was available to provide capable and effective service to the American people.

During the following decades, it became clear that the CSC could not properly, adequately, and simultaneously set managerial policy, protect the merit systems, and adjudicate employee appeals. Concern over the inherent or perceived conflict of interest in the CSC's role as both the rule-maker and adjudicator of those same rules was a principal motivating factor behind the passage of the Civil Service Reform Act of 1978 (CSRA).<sup>4</sup> The CSRA replaced the CSC with three new agencies including: MSPB as the successor to the Commission;<sup>5</sup> OPM as the President's agent for Federal workforce policy and procedure; and, the Federal Labor Relations Authority to oversee Federal labor-management relations.

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<sup>3</sup> Bogdanow, M., and Lanphear, T., History of the Merit Systems Protection Board, Journal of the Federal Circuit Historical Society, Vol. 4, 2010, pages 109-110.

<sup>4</sup> Ibid. page 113.

<sup>5</sup> Ibid. page 114.

**Current Organization.** MSPB is an independent Federal agency within the Executive Branch. MSPB's Board members, consisting of the Chairman, Vice Chairman, and Member, are appointed by the President, and confirmed by the Senate. Board members serve overlapping, nonrenewable 7-year terms and can be removed only for cause. No more than two of three Board members may be from the same political party. MSPB also has independent budgetary authority, as well as independent hiring authority for its General Schedule (GS) employees. The Board members' primary role is to adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer.

The Board currently consists of Mark A. Robbins, whom President Trump designated as Vice Chairman on January 23, 2017. As noted above, MSPB has operated without a quorum since January 8, 2017. In accordance with statute, Vice Chairman Mark A. Robbins is serving as Acting Chairman. The third Board member position has been vacant since March 1, 2015, when then-Vice Chairman Anne M. Wagner's one-year hold-over period expired. The lack of quorum prevents MSPB from issuing decisions in PFRs and other cases at HQ (although PFRs may still be filed with the Board), issuing reports of merit systems studies, and promulgating regulations in relation to statutory changes to its jurisdiction or process. Long-standing delegations authorized by Title 5 of the U.S. Code allow MSPB AJs in the regional and field offices to continue hearing appeals and issuing initial decisions. In addition, appellants in these actions may exercise their right to appeal directly to the CAFC, appeal mixed cases to the district courts or to the EEOC, or possibly appeal whistleblower decisions to other U.S. Courts of Appeals under the WPEA. Thus, MSPB's adjudicatory processes, albeit truncated, continue.

MSPB HQ, located in Washington, D.C., has eight offices that are responsible for conducting its statutory and support functions. These are the Offices of Appeals Counsel, Clerk of the Board, Equal Employment Opportunity, Financial and Administrative Management, General Counsel, Information Resources Management, Policy and Evaluation, and Regional Operations. The EEO Director reports directly to the Chairman. The Directors of the other offices report to the Chairman through the Executive Director. MSPB also has eight regional and field offices located throughout the United States. These offices process initial appeals and report to the Director of Regional Operations. The entire agency is currently authorized to employ approximately 235 FTEs to conduct and support its statutory responsibilities. Many support functions are performed by other Federal agencies through interagency agreements. More information about MSPB's role, functions, and scope of responsibility may be found in the Appendix B.

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**U.S. Merit Systems Protection Board  
Annual Performance Results FY 2017  
Annual Performance Plan for FY 2018 - 2019**

**MSPB Performance Framework**

**Mission**

**Protect the Merit System Principles and promote an effective Federal workforce  
free of Prohibited Personnel Practices.**

**Vision**

**A highly qualified, diverse Federal workforce that is fairly and effectively managed,  
providing excellent service to the American people.**

**Organizational Values**

- |                      |  |
|----------------------|--|
| <b>Excellence:</b>   | We will base our decisions on statutes, regulations, and legal precedents; use appropriate scientific research methods to conduct our studies and make practical recommendations for improvement; and develop and use appropriate processes to oversee the regulations and significant actions of the Office of Personnel Management. We will interact with our customers and stakeholders in a professional, respectful, and courteous manner. We will strive to be a model merit-based organization by applying the lessons we learn in our work to the internal management of MSPB. |
| <b>Fairness:</b>     | We will conduct our work in a fair, unbiased, and objective manner. We will be inclusive in considering the various perspectives and interests of stakeholders in our work, and in our external and internal interactions with individuals and organizations.  |
| <b>Timeliness:</b>   | We will issue timely decisions in accordance with our performance goals and targets. We will issue timely reports on the findings and recommendations of our merit systems studies. We will respond promptly to inquiries from customers and stakeholders.   |
| <b>Transparency:</b> | We will make our regulations and procedures easy to understand and follow. We will communicate with our customers and stakeholders using clear language. We will make our decisions, merit systems studies, and other materials easy to understand, and widely available and accessible on our website. We will enhance the understanding of our processes and the impact of our products through outreach efforts.  |

## Strategic Goals and Objectives

**Strategic Goal 1: Serve the public interest by *protecting* Merit System Principles and *safeguarding* the civil service from Prohibited Personnel Practices.**

**Strategic Objectives:**

- 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution processes.
- 1B: Enforce timely compliance with MSPB decisions.
- 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.
- 1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.

**Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to Merit System Principles, and *prevention* of Prohibited Personnel Practices.**

**Strategic Objectives:**

- 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.
- 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.
- 2C: Advance the understanding of the concept of merit, the MSPs, and the PPPs through the use of educational standards, materials, and guidance established by MSPB.

## Management Objectives

**Management Objectives: Effectively and Efficiently . . .**

- M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.
- M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.
- M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.
- M4: Modernize core business applications to achieve electronic adjudication, migrate the data center to the cloud, and provide a web-based survey capability.

## Tabular Summary of Current Progress and Future Targets

Table 1: Summary of MSPB FY 2017 Performance Results			
<b>Strategic Goal 1: Serve the public interest by <i>protecting</i> Merit System Principles and <i>safeguarding</i> the civil service from Prohibited Personnel Practices.</b>			
<b>Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution processes.</b>		<b>Partially Met</b>	
Performance Goal	Performance Measure	2017 Target	2017 Results
<a href="#">1A-1:</a> Quality of initial decisions	Percent initial decisions reversed/remanded on PFR	10% or fewer	Not rated; no quorum
<a href="#">1A-2:</a> Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or greater	94%
<a href="#">1A-3:</a> Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Continue surveys, address issues	Survey process implemented
<a href="#">1A-4:</a> Initial appeals processing timeliness	Average processing time	No target set, interim indicator on cases filed prior to 2017	98% of older appeals closed
<a href="#">1A-5:</a> PFR processing timeliness	Average processing time	220 days or fewer	Not rated; no quorum
<a href="#">1A-6:</a> Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Continue surveys, address issues	Survey process implemented
<b>Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.</b>		<b>Not rated; no quorum</b>	
<a href="#">1B-1:</a> Compliance case processing timeliness	Weighted average processing time for all compliance cases	135 days or fewer	Not rated; no quorum
<b>Strategic Obj. 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.</b>		<b>Partially Met</b>	
<a href="#">1C-1:</a> Number/scope of <i>Issues of Merit (IoM)</i> newsletter editions	Number/scope of published newsletter editions and Noteworthy articles	Publish 3-4 <i>IoM</i> eds. or Noteworthy articles	3 <i>IoM</i> eds. & 2 Noteworthy articles
<a href="#">1C-2:</a> Number/scope of study reports	Number/scope of reports published	Publish 3-4 merit systems study reports	Not rated; no quorum
<a href="#">1C-3:</a> Conduct surveys of Federal employees to assess & report on health of merit system	Conduct/analyze periodic surveys of Federal employees	Analyze MPS data; consider future survey capability	Analyses ongoing, posted 2016 MPS data
<b>Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.</b>		<b>Partially Met</b>	
<a href="#">1D-1:</a> Review OPM rules/regulations	Number/scope of OPM regulations reviewed	Track and report activity	Not rated; no quorum
<a href="#">1D-2:</a> Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review in Annual Report	OPM review posted in FY 2016 Annual Report
<b>Strategic Goal 2: Advance the public interest through <i>education</i> and <i>promotion</i> of stronger merit systems, <i>adherence</i> to Merit System Principles, and <i>prevention</i> of Prohibited Personnel Practices.</b>			
<b>Strategic Obj. 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.</b>		<b>Exceeded</b>	
<a href="#">2A-1:</a> References to MSPB's work	Scope of references to MSPB's work	Maintain scope	600+ references in 150 sources
<a href="#">2A-2:</a> Create policy-related products	Number/scope of policy-related products	Post at least highlights for all new study reports	3 products focused on policy-makers



Strategic Goal 2: Continued			
<b>Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through outreach.</b>		<b>Exceeded</b>	
Performance Goal	Performance Measure	2017 Target	2017 Results
<b>2B-1:</b> Conduct merit-based outreach events	Number/scope of merit-based outreach events	Within $\pm$ 5% of the previous year	138+ events
<b>Strategic Obj. 2C: Advance the understanding of the concept of merit, the MSPs, and the PPPs through the use of educational standards, materials, and guidance established by MSPB.</b>		<b>Exceeded</b>	
<b>2C-1:</b> Educational materials accessed on the website	Number of visits/accesses from website	Within $\pm$ 5% of previous year	1,326,462 (48% more)
<b>2C-2:</b> Create/update electronic educational materials	Number/type of new or updated educational materials	5 new or updated materials	7-9 items in 6 categories
<b>Management Obj. M1: Lead &amp; manage employees to ensure a diverse, inclusive, &amp; engaged workforce with the competencies to perform MSPB's mission &amp; support functions.</b>		<b>Met</b>	
<b>M1-1:</b> Ensure workforce competencies	Average percent positive on Federal Employee Viewpoint Survey (FEVS) competency questions	Within $\pm$ 5% of previous year	71% (3% increase)
<b>M1-2:</b> Maintain perceptions of diversity & inclusion	Average percent agreement on FEVS diversity & Internal Survey (IS) inclusion questions	Within $\pm$ 5% of previous year	Diversity 66% ( $\downarrow$ 1%) Inclusion 76% ( $\downarrow$ 2%)
<b>M1-3:</b> Maintain employee engagement	Average percent agreement FEVS engagement questions	Within $\pm$ 5% from previous year	70% (1% increase)
<b>Management Obj. M2: Manage budget and financial resources and improve adjudication efficiency to ensure necessary resources now and in the future.</b>		<b>Met</b>	
<b>M2-1:</b> Ensure justified budgets & resource accountability	Average of percent funded positions vacant at end of each month	8% or fewer positions vacant	3.4% average vacancy rate
<b>M2-2:</b> Improve adjudication processing efficiency	Proportion of cases processed entirely electronically	Develop req'mts for new core business apps	See report
<b>Management Obj. M3: Manage IT and information services programs to support agency mission and administrative functions and implement modernization initiatives.</b>		<b>Met</b>	
<b>M3-1:</b> Ensure available/reliable IT infrastructure & applications	Average percent agreement on relevant IS questions	Within $\pm$ 5% of previous year	58% (13% increase)
<b>M3-2:</b> Maintain internal/external IT customer support	Percent tickets closed within SLA and with customer agreement	Cont. cSupport, plan for iSupport system	See report
<b>M3-3:</b> Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	Within $\pm$ 5% of previous year	52% (5% increase)
<b>M3-4:</b> Ensure e-Appeal Online meets customer needs	Average percent agreement on e-Appeal customer survey questions	Begin development of customer survey	See report
<b>Management Obj. M4: Ensure individual and workplace safety and security.</b>		<b>Met</b>	
<b>M4-1:</b> Employees prepared to ensure safety and security	Average percent agreement on IS safety and security questions	Within $\pm$ 5% of previous year	90% (5% higher)



**Table 2: Summary of MSPB FY 2018 (Final) and FY 2019 (Proposed) Performance Plan**

**Strategic Goal 1: Serve the public interest by *protecting* Merit System Principles and *safeguarding* the civil service from Prohibited Personnel Practices.**

**Strategic Obj. 1A: Provide understandable, high-quality resolution of appeals, supported by fair and efficient adjudication and alternative dispute resolution processes.**

Performance Goal	Performance Measure	2018 Target (Final)	2019 Target (Proposed)
<a href="#">1A-1</a> : Quality of initial decisions	Percent initial decisions reversed/remanded on PFR	No target set; no quorum	TBD based on FY 2018 results
<a href="#">1A-2</a> : Quality of decisions reviewed by reviewing authority	Percent decisions unchanged by the reviewing court	92% or greater	
<a href="#">1A-3</a> : Participant perceptions of the adjudication <i>process</i>	Percent participant agreement	Continue customer surveys, address issues, as appropriate	
<a href="#">1A-4</a> : Initial appeals processing timeliness	Average processing time	120 days or fewer	
<a href="#">1A-5</a> : PFR processing timeliness	Average processing time	No target set; no quorum	TBD based on FY 2018 results
<a href="#">1A-6</a> : Participant perceptions of the ADR <i>process</i>	Percent participant agreement	Continue customer surveys, address issues, as appropriate	

**Strategic Obj. 1B: Enforce timely compliance with MSPB decisions.**

<a href="#">1B-1</a> : Compliance case processing timeliness	Weighted average processing time for all compliance cases	No target set; no quorum	TBD based on FY 2018 results
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**Strategic Obj. 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.**

<a href="#">1C-1</a> : Number/scope of <i>Issues of Merit</i> newsletter editions	Number/scope of published newsletter editions and Noteworthy articles	3-4 newsletter editions or Noteworthy articles	
<a href="#">1C-2</a> : Number/scope of study reports	Number/scope of reports published	No target set; no quorum	TBD based on FY 2018 results
<a href="#">1C-3</a> : Conduct surveys of Federal employees to assess & report on health of merit systems	Conduct/analyze periodic surveys of Federal employees	Analyze MPS data; renew OPM MOU for EHRI data	TBD based on FY 2018 results

**Strategic Obj. 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.**

<a href="#">1D-1</a> : Review OPM rules/regulations	Number/scope of OPM regulations reviewed	Track and report activity	
<a href="#">1D-2</a> : Review OPM significant actions	Number/scope of OPM significant actions reviewed	Maintain scope; publish review of OPM significant actions	

**Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to Merit System Principles, and *prevention* of Prohibited Personnel Practices.**

**Strategic Obj. 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.**

<a href="#">2A-1</a> : References to MSPB's work	Scope of references to MSPB's work	Maintain scope	
<a href="#">2A-2</a> : Create policy-related products	Number/scope of policy-related products	Post highlights for all new study reports	

Strategic Goal 2: Continued			
Strategic Obj. 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.			
Performance Goal	Performance Measure	2018 Target (Final)	2019 Target (Proposed)
<u>2B-1</u> : Conduct merit-based outreach events	Number/scope of merit-based outreach events	Within ± 5% of number of outreach events in previous year	
Strategic Obj. 2C: Advance the understanding of the concept of merit, the MSPs, and the PPPs through the use of educational standards, materials, and guidance established by MSPB.			
<u>2C-1</u> : Educational materials accessed on the website	Number of visits to the MSPB website	Within ± 5% of previous year	
<u>2C-2</u> : Create/update electronic educational materials	Number/type of new or updated educational materials	Post 5 or more new or updated educational materials	
Management Obj. M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB’s mission and support functions successfully.			
<u>M1-1</u> : Ensure workforce competencies	Average percent agreement on FEVS competency questions	Maintain competency rating within ± 5% from previous year	
<u>M1-2</u> : Maintain perceptions of diversity & inclusion	Average percent agree on FEVS diversity & IS inclusion questions	Maintain diversity and inclusion ratings within ± 5% from previous year	
<u>M1-3</u> : Maintain employee engagement	Average percent agreement on FEVS engagement questions	Maintain engagement rating within ± 5% from previous year	
Management Obj. M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.			
<u>M2-1</u> : Ensure justified budgets & resource accountability	Percent of funded positions vacant each month, averaged over the year	8% or fewer	
<u>M2-2</u> : Employees prepared to ensure safety and security (was M4-1)	Average percent agreement on relevant IS questions	Percent agreement within ± 5% of previous year	
Management Obj. M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.			
<u>M3-1</u> : Ensure available/reliable IT infrastructure & applications	Average percent agreement on relevant IS questions	Percent agreement within ± 5% of previous year	TBD based on FY 2018 IS results
<u>M3-2</u> : Maintain internal/external IT customer support	Percent tickets closed within SLA and with customer agreement	Continue cSupport, plan for iSupport system	TBD based on FY 2018 results
<u>M3-3</u> : Ensure satisfaction with internal IT support	Average percent agreement on relevant IS questions	Percent agreement within ± 5% of previous year	TBD based on FY 2018 IS results
<u>M3-4</u> : Ensure e-Appeal Online meets customer needs	Average percent agreement on e-Appeal customer survey questions	Continue developing automated e-Appeal user survey	TBD based on FY 2018 results
Management Obj. M4: Modernize core business applications to achieve electronic adjudication, migrate the data center to the cloud, and provide a web-based survey capability.			
<u>M4-1</u> : (Was M2-2) Improve adjudication processing efficiency	Proportion of cases processed entirely electronically	Develop req’mnts for next generation core business apps.	Select & begin to implement new core business apps.
<u>M4-2</u> : Improve infrastructure and network integrity and management	Migrate data center to managed services environment in the cloud	Begin migrating data center to the cloud	TBD based on FY 2018 results

## Comprehensive Performance Results and Plans

**Strategic Goal 1: Serve the public interest by *protecting* Merit System Principles and *safeguarding* the civil service from Prohibited Personnel Practices.**

**Strategic Objective 1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution processes.**

Results indicate that this objective was **Partially Met**. MSPB exceeded its adjudication performance measure targets related cases left unchanged by the CAFC. We did not set a goal for average processing time for initial appeals but achieved the target for the interim indicator, closing 98 percent of cases filed before October 1, 2016. We also implemented an automated electronic process to begin collecting customer service feedback on the adjudication and settlement processes in the regional and field offices and on the Mediation Appeals Program (MAP). The target for average processing time for PFRs was defined under the assumption of normal operations at HQ and the continued release of PFR decisions over the entire year. The same assumption is true for the quality of initial appeals which is based on issuance of decisions in PFR cases. However, the departure of former Chairman Susan Tsui Grundmann in early January 2017 meant that there was no quorum of Board members to vote on and release PFRs and other decisions at HQ from early January to the end of FY 2017. Therefore, we were unable to rate the performance for average processing time for PFRs, and for quality of initial decisions due to the lack of a quorum. Nonetheless, we continue to keep apace with processing cases at HQ and the Vice Chairman has reviewed and voted a significant number of PFR cases, which await consideration by additional members once they are nominated and confirmed. The FY 2018 and FY 2019 performance targets for cases left unchanged by the CAFC will remain the same as for FY 2017. The FY 2018 and FY 2019 targets for participants' perceptions of the adjudication and ADR processes will be to continue the automated survey process and to take actions when appropriate. The FY 2018 and FY 2019 targets for average processing time for initial appeals will be set at 120 days or fewer. We will discontinue the interim indicator for processing initial appeals. We want to ensure that the new Board members have the flexibility to assess all issues regarding the inventory of PFR cases and how best to process them beyond just the consideration of a target for average processing time. Therefore, we are not setting an average PFR processing time target for FY 2018 and the FY 2019 target is TBD based on FY 2018 results. The FY 2018 and FY 2019 targets for quality of initial decisions will be the same as for processing PFRs because this measure is based on issuance of PFR cases. We will continue to receive PFR cases, draft proposed decisions for Board member review, and record the Vice Chairman's votes on these decisions. When a quorum is restored, we will consider how to best measure and set targets for processing the inventory of PFR cases at HQ and for quality of initial appeals.

Performance Goal 1A-1: Maintain quality of initial decisions.			
<b>Measure:</b> Percent of initial decisions that are reversed or remanded on Petition for Review (PFR) due to error or oversight.			
Results		Targets	
<b>FY 2011</b>	7%	<b>FY 2017</b>	10% or fewer
<b>FY 2012</b>	6%	<b>FY 2018</b>	No target set; no quorum
<b>FY 2013</b>	8%	<b>FY 2019</b>	TBD based on FY 2018 results
<b>FY 2014</b>	7%		
<b>FY 2015</b>	2%		

<b>FY 2016</b>	5%	
<b>FY 2017</b>	Not rated; no quorum	

**Performance Goal 1A-2: Maintain quality of decisions reviewed by reviewing authority.**

**Measure:** Percent of MSPB decisions left unchanged (affirmed or dismissed) upon review by the U.S. Court of Appeals for the Federal Circuit.

Results		Targets	
<b>FY 2011</b>	98%	<b>FY 2017</b>	92% or more
<b>FY 2012</b>	94%	<b>FY 2018</b>	92% or more
<b>FY 2013</b>	93%	<b>FY 2019</b>	92% or more
<b>FY 2014</b>	96%		
<b>FY 2015</b>	96%		
<b>FY 2016</b>	94%		
<b>FY 2017</b>	94%		

**Performance Goal 1A-3: Maintain participants' positive perceptions of the adjudication *process*.**

**Measure:** Percent of adjudication participants surveyed who agree MSPB adjudication processes are fair, open, accessible, understandable, and easy to use.

Results		Targets	
<b>FY 2012</b>	Survey development and search for platform continued, implementation of new surveys postponed until FY 2013 due to resource limitations and competing priorities. (New in FY 2012)	<b>FY 2017</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2013</b>	Worked with contractor to assess hosting and security requirements and reviewed responses to Request for Information (RFI) designed to obtain information on current solutions for secure web-based survey platform. Further progress was limited by competing priorities and the state of emerging web-based survey solutions.	<b>FY 2018</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2014</b>	Dept. of Interior National Business Center published an RFI to assess availability and drafted a Request for Quote (RFQ) to be issued to several cloud service providers.	<b>FY 2019</b>	Continue to obtain automated customer service and customer satisfaction feedback, consider results, and take action to address issues, as appropriate.
<b>FY 2015</b>	Customer survey data collected from PFR customers in support of the PFR program evaluation.		
<b>FY 2016</b>	Collected customer feedback on the PFR and MAP participants. Customer surveys submitted for OMB PRA approval. Automated sampling and invitation process was developed. Data collection will begin when OMB approves the surveys.		
<b>FY 2017</b>	Implemented automated survey process and began data collection.		

Performance Goal 1A-4: Maintain processing timeliness for initial appeals.			
<b>Measure:</b> Average case processing time for initial appeals.			
Results		Targets	
<b>FY 2011</b>	94 days	<b>FY 2017</b>	Track closure of oldest cases under indicator 1A-4a.
<b>FY 2012</b>	93 days	<b>FY 2018</b>	120 days or fewer.
<b>FY 2013</b>	93 days	<b>FY 2019</b>	120 days or fewer.
<b>FY 2014</b>	262 days*		
<b>FY 2015</b>	499 days*		
<b>FY 2016</b>	99.5% of furloughs & 78% of nonfurlough workload completed.		
<b>FY 2017</b>	See Interim Indicator below.		

\* A weighted average including all initial appeals closed.

#### Interim Indicators for Initial Appeals Processing:

1A-4a: Percent of initial decisions issued for nonfurlough initial appeals. In FY 2017, this indicator was redefined to be the percent of cases closed that were filed prior to October 1, 2016. Discontinued in FY 2018.

FY 2013	75%	(5,538/7,396)
FY 2014	70%	(5,212/7,480)
FY 2015	70%	(5,418/7,752)
FY 2016	78%	(5,886/7,669)
FY 2017 Target	65%	(closure of 2030 cases on hand as of October 1, 2016)
FY 2017 Result	98%	(1,989/2,030)

Performance Goal 1A-5: Maintain processing timeliness for PFRs.			
<b>Measure:</b> Average case processing time for petitions for review (PFRs) of initial appeals.			
Results		Targets	
<b>FY 2011</b>	213 days	<b>FY 2017</b>	220 days or fewer
<b>FY 2012</b>	245 days*	<b>FY 2018</b>	No target set, no quorum
<b>FY 2013</b>	281 days	<b>FY 2019</b>	TBD based on FY 2018 results
<b>FY 2014</b>	287 days**		
<b>FY 2015</b>	190 days		
<b>FY 2016</b>	185 days		
<b>FY 2017</b>	Not rated; no quorum		

\* 74 PFR cases were delayed awaiting the *Latham vs. USPS* oral argument case. The average PFR processing time not counting the *Latham* cases, was 237 days. \*\* 20 PFR cases were delayed awaiting the decisions issued by the U.S. Court of Appeals for the Federal Circuit related to *Conyers* and *Gargiulo*. If those 20 cases are removed from the calculations, the average processing time was 279 days.

Performance Goal 1A-6: Maintain participants' positive perceptions of the ADR <u>process</u> .			
<b>Measure:</b> Percent of participants in the ADR programs, including initial appeals settlement and the Mediation Appeals Program (MAP), surveyed who agree the ADR process was helpful, valuable, and noncoercive, even if no agreement was reached.			
Results		Targets	
<b>FY 2012</b>	Survey development and search for platform continued, implementation of surveys postponed until FY 2013 due to resource limitations and competing priorities. (New in 2012.)	<b>FY 2017</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results and take action to address issues, as appropriate.

<b>FY 2013</b>	Worked with contractor to assess hosting and security requirements and reviewed responses to RFI designed to obtain information on current solutions for secure web-based survey platform. Further progress limited by competing priorities and the state of emerging web-based survey solutions.	<b>FY 2018</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results and take action to address issues, as appropriate.
<b>FY 2014</b>	The Department of Interior National Business Center published an RFI to assess availability of a solution and drafted a RFQ to be issued to several cloud service providers.	<b>FY 2019</b>	Continue to obtain ADR customer service and customer satisfaction feedback, consider results and take action to address issues, as appropriate.
<b>FY 2015</b>	Collecting feedback from participants in MAP.		
<b>FY 2016</b>	Collected customer feedback from PFR and MAP participants. Customer surveys submitted for OMB PRA approval. Automated sampling and invitation process was developed. Data collection will begin when OMB approves the surveys.		
<b>FY 2017</b>	Implemented automated survey process and began data collection.		

**Strategic Objective 1B: Enforce timely compliance with MSPB decisions.**

This objective was **not rated due to the lack of a quorum**. This performance target was set with the assumption that we would release decisions in enforcement cases at HQ for the entire year. While we continued to process compliance cases at HQ and in the regional and field offices, the lack of a quorum of Board members meant that we were unable to release decisions in enforcement cases at HQ from early January to the end of FY 2017. Thus, we could not rate the performance for this objective. We want to ensure that the new Board members have the flexibility to assess all issues regarding how best to process compliance cases beyond just the consideration of a target for average processing time. Therefore, we are not setting an average processing time target for FY 2018 and the FY 2019 target is TBD based on FY 2018 results. We will continue to receive and process compliance cases in the regional and field offices and in HQ. When a quorum is restored, we will consider how to best set a target for processing compliance cases.

Performance Goal 1B-1: Maintain timeliness of processing compliance/enforcement cases.			
Measure: Weighted average processing time for all enforcement cases.			
Results		Targets	
<b>FY 2011</b>	288 days	<b>FY 2017</b>	135 days or fewer
<b>FY 2012</b>	244 days	<b>FY 2018</b>	Target not set, no quorum
<b>FY 2013</b>	355 days	<b>FY 2019</b>	TBD based on FY 2018 results
<b>FY 2014</b>	215 days		
<b>FY 2015</b>	161 days		
<b>FY 2016</b>	159 days		
<b>FY 2017</b>	Not rated; no quorum		



**Strategic Objective 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.**

Results indicate this objective was **Partially Met**. MSPB exceeded the target for publication of newsletters and ‘Noteworthy’ articles. We published three *IoM* newsletter editions on topics such as misconduct and penalties, making a difference at work, stewardship and the MSPs, effective hiring, emotional exhaustion, sexual harassment trends, and Federal HR offices. We published two ‘Noteworthy’ articles, one on addressing misconduct in the federal civil service and another on managing the workforce under the MSPs. MSPB published one study report, [Adverse Actions: A Compilation of Articles](#) before the Board lost its quorum. No reports could be issued while the board lacked a quorum, therefore, the performance goal on publication of study reports could not be rated. We continued to process 2016 MPS data and began work to update the Memorandum of Understanding (MOU) with OPM for the use of Enterprise Human Resources Integration (EHRI) data. The FY 2018 and FY 2019 performance targets for publishing newsletter editions and ‘Noteworthy’ articles will remain as they were for FY 2017. The FY 2018 target for conducting surveys of Federal employees will be to continue to analyze data from the 2016 MPS and prepare reports on selected issues. We also will ensure access to OPM’s Federal employee data, and continue to investigate options for a web-based survey capability. The FY 2019 target for this goal is TBD based on FY 2018 results. Because we lack a quorum of Board members, we are not setting a target for the number of merit systems studies reports published in FY 2018, and the target for FY 2019 is TBD based on FY 2018 results. While we do have two reports prepared for review and approval by new Board members, there are a variety of factors that may affect approval of reports. Board members have great discretion in determining whether or not to approve a report for publication based on their priorities and understanding of the issue, the current state of policy and legislative activity relative to a topic, and other considerations. In addition, review and approval of merit systems studies reports will necessarily be balanced with the Board members’ responsibilities to process and vote on cases at HQ. Once a quorum is restored, we will consider how to determine an appropriate target for publication of merit systems study reports.

Performance Goal 1C-1: Maintain the number and scope of <i>Issues of Merit</i> newsletter editions or other articles.			
Measure: Number and scope of <i>Issues of Merit</i> ( <i>IoM</i> ) newsletter editions or other articles published.			
Results		Targets	
<b>FY 2013</b>	3 editions of the <i>IoM</i> newsletter and 1 article related to 8 MSPs. (New in FY 2013.)	<b>FY 2017</b>	Publish 3-4 <i>IoM</i> eds. or Noteworthy articles.
<b>FY 2014</b>	3 <i>IoM</i> newsletter editions and 6 online flash articles published relating to all MSPs and 4 PPPs.	<b>FY 2018</b>	Publish 3-4 <i>IoM</i> eds. or Noteworthy articles.
<b>FY 2015</b>	3 <i>IoM</i> newsletter editions and 4 online flash articles relating to all MSPs and 8 PPPs.	<b>FY 2019</b>	Publish 3-4 <i>IoM</i> eds. or Noteworthy articles.
<b>FY 2016</b>	3 <i>IoM</i> eds. & 2 Noteworthy articles (all MSPs & PPPs).		
<b>FY 2017</b>	3 <i>IoM</i> eds. & 2 Noteworthy articles published entitled, <a href="#">Addressing Misconduct in the Federal Civil Service: Management Perspectives</a> and <a href="#">Keys to Managing the Federal Workforce</a> (all MSPs and PPPs).		

Performance Goal 1C-2: Maintain the number and scope of MSPB study reports.			
<b>Measure:</b> Number and scope (percent of the workforce, agencies, or policy areas impacted) of merit systems studies reports published each year.			
Results		Targets	
<b>FY 2011</b>	4 reports completed.	<b>FY 2017</b>	3-4 study reports published.
<b>FY 2012</b>	3 reports completed.	<b>FY 2018</b>	No target set, no quorum.
<b>FY 2013</b>	1 report (3 MSPs) completed.	<b>FY 2019</b>	TBD based on FY 2018 results.
<b>FY 2014</b>	4 reports approved and published.		
<b>FY 2015</b>	4 reports published (7 MSPs & 9 PPPs).		
<b>FY 2016</b>	3 reports published (all MSPs).		
<b>FY 2017</b>	Not rated; no quorum.		

Performance Goal 1C-3: Conduct surveys of Federal employees to assess and report on health of the Federal merit systems.			
<b>Measure:</b> Conduct periodic Governmentwide and focused surveys of Federal employees and others (including interrogatories directed to agencies), as appropriate.			
Results		Targets	
<b>FY 2014</b>	(New measure in FY 2015.)	<b>FY 2017</b>	Continue analyzing MPS & other survey results and prepare study reports on selected topics; consider and collaborate with CIO on options for a future secure, cloud-based survey capability.
<b>FY 2015</b>	Content for the next MPS to support the new FY 2015-2018 research agenda was developed, & a survey vendor was selected to program and administer the next MPS, on track for administration in early 2016. An RFQ for MSPB's survey platform was issued by the DOI National Business Center; procurement of survey platform was put on hold to accomplish key milestones for the MPS, and as a result of the IT outage and changing Federal IT requirements.		Continue analyzing MPS & other survey results and prepare study reports on selected topics; ensure access to OPM Federal employee data; continue to consider options to ensure a secure cloud-based survey capability.
<b>FY 2016</b>	2016 MPS was successfully administered to approximately 120,000 Federal employees from 24 Federal agencies. The survey was fully compliant with Federal IT and security requirements and covered topics such as PPPs, dealing with poor performers, sexual and other workplace harassment, and employee engagement.	<b>FY 2019</b>	TBD based on FY 2018 results.
<b>FY 2017</b>	Analyzing MPS data, and preparing study reports on selected topics, conducted after-action review of the survey process, prepared data for the National Archives and Records Administration and proactively posted MPS data on our website. Began working with OPM to renew the MOU for use of EHRI data.		



**Strategic Objective 1D: Review and act upon the rules, regulations, and significant actions of the Office of Personnel Management, as appropriate.**

Results indicate that this objective was **Partially Met**. MSPB published the FY 2016 Annual Report, which contained the review of OPM's 2016 significant actions and updates of selected OPM significant actions from prior reports. MSPB had two requests to review OPM regulations pending at the end of FY 2017. However, due to the lack of a quorum, MSPB could not issue decisions involving requests for review of OPM regulations from early January to the end of FY 2017. Thus, the performance goal involving review of OPM regulations was not rated. Although the performance goal for review of OPM regulations was not rated in FY 2017, we are retaining the same target for FY 2018 and FY 2019. Once a quorum is restored we will determine if we are able to rate the results of this performance goal. The FY 2018 and FY 2019 targets for review of OPM significant actions are the same as for FY 2017.

Performance Goal 1D-1: Maintain program for review of OPM regulations.			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM rules and regulations (or implementation of the same) reviewed.			
Results		Targets	
<b>FY 2012</b>	After-action review of MSPB internal processes for review of OPM regulations postponed due to resource limitations and competing priorities. (New in FY 2012.)	<b>FY 2017</b>	Track program activity and scope.
<b>FY 2013</b>	Reviewed MSPB internal procedures for reviewing OPM rules and regulations.	<b>FY 2018</b>	Track program activity and scope.
<b>FY 2014</b>	Decisions issued on 3 cases on review of OPM regulations.	<b>FY 2019</b>	Track program activity and scope.
<b>FY 2015</b>	One decision issued in response to a request for OPM regulation review.		
<b>FY 2016</b>	Nine decisions issued in response to requests for OPM regulation review.		
<b>FY 2017</b>	Not rated; no quorum		

Performance Goal 1D-2: Maintain program for review and reporting of OPM significant actions.			
<b>Measure:</b> Number and scope (e.g., percent of the workforce, agencies, or policy areas impacted) of OPM significant actions that are reviewed and reported.			
Results		Targets	
<b>FY 2012</b>	Published FY 2011 Annual Report, which contained a broader range of OPM significant actions, updates of earlier actions, and added contextual information. After-action review of MSPB procedures of at least one OPM significant action postponed due to resource limitations, staff changes, and competing priorities. (New in FY 2012.)	<b>FY 2017</b>	Maintain scope of review, and publish review of OPM significant actions for previous year in MSPB Annual Report.
<b>FY 2013</b>	Published MSPB's FY 2012 Annual Report, which included summary of OPM's significant actions. After-action review completed and submitted to Executive Director.	<b>FY 2018</b>	Maintain scope of review, publish review of OPM significant actions for previous year in MSPB Annual Report.

<b>FY 2014</b>	Published FY 2013 Annual Report containing summary of FY 2013 OPM significant actions equal in scope to previous years.	<b>FY 2019</b>	Maintain scope of review, publish review of OPM significant actions for previous year in MSPB Annual Report.
<b>FY 2015</b>	Published MSPB FY 2014 Annual Report including summary of 2014 OPM significant actions.		
<b>FY 2016</b>	FY 2015 Annual Report including review of FY 2015 OPM significant actions published on February 29, 2016.		
<b>FY 2017</b>	FY 2016 Annual Report including review of FY 2016 OPM significant actions published on January 18, 2017.		

**Strategic Goal 2: Advance the public interest through *education* and *promotion* of stronger merit systems, *adherence* to Merit System Principles, and *prevention* of Prohibited Personnel Practices.**

**Strategic Objective 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.**

Results indicate that this objective was **Exceeded**. MSPB cases, studies, reports, newsletter articles, and other products were cited hundreds of times in 150 different print and electronic sources, 11 percent more unique sources than the previous year. Citation sources included 22 professional and trade publications, 13 wire services, 38 major city daily newspapers, 8 Congressional sources, and a variety of websites and blogs. In accord with the Senate Report published in 2016, the NDAA for FY 2017 (signed in December 2016) used an MSPB report on veterans hiring to support reinstatement of the 180-day waiting period for departing military personnel before they can be hired into Federal civilian positions. MSPB merit system study reports, including the compilation of articles about processing adverse actions, were cited by the President of the Senior Executive Association (SEA) in testimony during a hearing entitled “Empowering Managers: Ideas for a More Effective Federal Workforce” conducted on February 9, 2017, by the Senate Subcommittee on Regulatory Affairs and Federal Management. The President of the Federal Management Association (FMA) cited an MSPB study on due process during the same Senate Subcommittee hearing. Several MSPB merit system study reports were cited in the Appendix to OMB Memorandum M-17-22 entitled, “*Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*.” In addition, the Congressional Research Service report, entitled, *Federal Government Employment: Veterans’ Preference in Competitive Examining*, cited MSPB’s report on veterans hiring in the civil service. Finally, MSPB reports on engagement and on training for the SES were cited in a handbook on Federal Government Leadership and Administration.<sup>6</sup> We posted several other documents for policy-makers including management perspectives on addressing misconduct in the Federal civil service, an interactive version of the adverse action report, an annotated flow-chart on the Federal process for adverse actions, and a guide to managing Federal employees under the MSPs. The FY 2018 and FY 2019 performance targets will remain as for FY 2017.

<sup>6</sup> Rosenbloom, David H., Malone, Patrick S., and Valdez, Bill, Editors, *The Handbook of Federal Government Leadership and Administration: Transforming, Performing, and Innovating in a Complex World*, 2017, The American Society for Public Administration (ASPA).

Performance Goal 2A-1: Maintain scope of references to MSPB work and products.			
<b>Measure:</b> Scope (location or identity of citing organization) of references to MSPB decisions, reports, newsletters, web content, or other materials in policy papers, Federal legislation, professional literature, Executive Orders, the media, or other sources.			
Results		Targets	
<b>FY 2012</b>	MSPB legal and studies work were referenced in electronic and print sources (e.g., the <i>Washington Post</i> , GovExec.com, & Fed News Radio); in testimony by Special Counsel Carolyn Lerner about OSC's education and legislative efforts, in her presentation at the Federal Dispute Resolution Conference (FDR), and in an OSC Nov. 22, 2011 press release; a cost-effective method to automatically track references to MSPB work was not identified. (New in 2012.)	<b>FY 2017</b>	Maintain scope of references.
<b>FY 2013</b>	MSPB studies or legal work was cited in over 70 online or print media sources, trade publications (e.g., published by legal, employee, management, or union groups), and scientific journals from around the world; and several blogs and websites. MSPB's study on training supervisors was cited in OPM's guidance on supervisory training; and reports on employee engagement were referenced in a book about engaging Government employees published by the American Management Association.	<b>FY 2018</b>	Maintain scope of references.
<b>FY 2014</b>	MSPB was cited in over 94 sources including 24 professional or trade sources; 38 city newspapers; 16 wire services including AP, UPI, & CNN Wire; 7 Congressional sources; and 9 blogs or other sources. Congress cited <i>The Power of Employee Engagement</i> report in its request for the GAO to study Federal employee morale and engagement. MSPB work was also cited in legislation on sensitive positions and on the Veterans Access, Choice, and Accountability Act of 2014.	<b>FY 2019</b>	Maintain scope of references.

FY 2015	<p>MSPB was cited in at least 115 different sources including 48 professional and trade publications, 36 print or online city newspapers, 7 Congressional sources, 16 wire services, and 9 blogs and other sources. MSPB legal work and/or studies reports were cited in a GAO report and GAO testimony on engagement and in a GAO report on using probationary period to manage poor performers. MSPB's report on due process was cited in Congressional testimony and in a Congressional blog by Congressman Mark Takano regarding the pending legislation on the VA Accountability Act of 2015. OPM also cited MSPB engagement reports in a white paper on how to engage the Federal workforce.</p>	
FY 2016	<p>MSPB was cited over 680 times in over 135 different sources including 29 professional or trade publications, 12 Congressional publications, 17 wire services, and 48 newspapers. Also, MSPB studies were cited in the August 2016 GAO report on OPM oversight of Federal hiring authorities, an International Personnel Management Association (IPMA) News article and in a text book on Federal HR. MSPB studies were cited in Congressional discussions of veterans hiring, addressing employee misconduct, and preventing discrimination on the basis of sexual orientation.</p>	
FY 2017	<p>MSPB was cited over 600 times in 150 different sources. Several MSPB study reports were cited in the OMB Memorandum M-17-22 on Reforming the Federal Government, and in testimony by the SEA and the FMA before a Senate hearing on empowering Federal managers. The study report on veterans hiring was cited in a <a href="#">report</a> by the Congressional Research Service, and reports on engagement and on SES training were cited in a new Federal management handbook published by ASPA. The 2017 NDAA provision to repeal the 180-day waiver for hiring people with previous military experience used MSPB's veterans hiring report.</p>	

Performance Goal 2A-2: Maintain the number and scope of MSPB products focused on policy-makers or changing Governmentwide policy.			
<b>Measure:</b> Number, type, and scope of MSPB products created and made available to inform policy-makers on issues and potential improvements to merit systems policies, laws, and/or regulations.			
Results		Targets	
<b>FY 2012</b>	Products include text and video links on MSPB's website of the Chairman's testimony for the Senate oversight hearing. (New in FY 2012.)	<b>FY 2017</b>	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.
<b>FY 2013</b>	Developed and posted 3 one-page 'Research Highlights' – brief summaries of the findings & recommendations of merit system study reports related to policy issues.	<b>FY 2018</b>	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.
<b>FY 2014</b>	Posted <i>Research Highlights</i> for the <i>Clean Records, Favoritism, Training and Experience, Sexual Orientation, and Veterans Hiring Policies and Practices</i> and four previously published reports. Compiled highlights into a 'catalog' of MSPB studies including an introduction by the Chairman.	<b>FY 2019</b>	Develop and post highlights from all new MSPB studies that focus on policy issues, as appropriate.
<b>FY 2015</b>	Posted <i>Research Highlights</i> for reports on <i>Veterans Redress Laws, Fair and Open Competition, and Due Process</i> ; and a monograph on Federal employee due process rules and reality and the Chairman's record testimony on S. 1082, S. 1117, and S. 1856.		
<b>FY 2016</b>	Posted <i>Research Highlights</i> for reports on <i>SES Training; Nepotism in the Federal Workforce</i> ; and <i>The MSPs: Guiding Fair and Effective Management</i> ; Chairman Grundmann's record testimony from MSPB's December 16, 2015 Reauthorization Hearing before the House Committee on Oversight and Government Reform Subcommittee on Government Operations; and an important and informative article on using indefinite suspensions in cases involving possible criminal behavior.		
<b>FY 2017</b>	Published an interactive version of the <i>Adverse Action</i> Report; management perspectives on addressing misconduct in the civil service; the <i>MSPs: Use in Guiding Fair &amp; Effective Management of the Workforce</i> ; and an annotated diagram illustrating current avenues of review of appeal for an adverse action taken against Federal employees.		

**Strategic Objective 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.**

Results indicate this objective was **Exceeded**. MSPB conducted 138 outreach events, approximately 20 percent higher than the number conducted in the previous year. Outreach topics included MSPB adjudication processes and legal precedent, Federal employment law, merit systems studies research, and general merit systems issues. Audiences included Federal labor and employment law attorneys, HR professionals, researchers, and Executive branch agencies, among others. MSPB staff also presented at the FDR Conference and at the OPM research summit. MSPB's Director of the Office of Policy and Evaluation (OPE) participated in a series of meetings between OMB and Federal agencies to clarify OMB expectations for agency responses to OMB Memorandum M-17-22. The FY 2018 and FY 2019 targets for number of events will remain as for FY 2017. In FY 2018, we will consider ways to improve collecting audience feedback, and in FY 2019, we will implement changes to such collections, as appropriate.

Performance Goal 2B-1: Maintain the number and scope of outreach contacts.			
Measure: Number and scope of MSPB contacts with practitioners and stakeholders focused on improving the understanding or practice of merit, improving adherence to MSPs, and preventing PPPs in the workplace.			
Results		Targets	
<b>FY 2012</b>	Almost 150 events were recorded in the outreach calendar on legal, merit systems studies, and other topics; events included visits by the Federal Circuit and sister agencies (OSC, OPM, and Dept. of Labor/Appeals Review Board), and several events involving MSPB regulations.	<b>FY 2017</b>	Conduct or participate in a number of events within $\pm 5\%$ of the number from 2016. Using new outreach calendar data, consider methods to collect customer feedback on outreach events.
<b>FY 2013</b>	Conducted 94 outreach events on topics related to MSPB studies, legal cases and processes, merit/MSPs/PPP, and other issues.	<b>FY 2018</b>	Conduct or participate in a number of events within $\pm 5\%$ of the number from 2017. Consider methods to improve collecting customer feedback at events.
<b>FY 2014</b>	Conducted 100+ outreach events on legal, studies, merit/MSPs/PPP, administrative, and other issues.	<b>FY 2019</b>	Conduct or participate in a number of events within $\pm 5\%$ of the number from 2018. Implement changes in collecting audience feedback, as appropriate.
<b>FY 2015</b>	Conducted 144 outreach events on legal, studies, merit/MSPs/PPP, administrative, and other issues. Participant surveys from formal conferences were available.		
<b>FY 2016</b>	Conducted over 115 outreach events on legal, studies, merit/MSPs/PPP, administrative, and other issues. The outreach portion of the new office calendar was updated and will be implemented when the new MSPB Portal goes live in FY 2017.		
<b>FY 2017</b>	Conducted 138 outreach events, and implemented the new outreach calendar which improves the collection of outreach data including type of audience feedback collected at events.		

**Strategic Objective 2C: Advance the understanding of the concept of merit, the MSPs, and the PPPs through the use of educational standards, materials, and guidance established by MSPB.**

Results indicate this objective was **Exceeded**. The number of visits to pages on the MSPB website increased from FY 2016 by 48 percent. We added 7-9 updated educational and informational materials or documents in 6 categories to our website. These documents include: the designation of the new Vice Chairman and FAQs on the impact of the lack of a quorum on Board operations and appeals; an interactive report on adverse actions; a guide to managing under the MPSs; two external reviews of the agency's IT infrastructure; an annotated diagram illustrating current avenues of review or appeal for an adverse action; and data from the 2016 MPS. We also reorganized our FOIA web page including the addition of new FOIA guidance, and created a new web page dedicated to the Privacy Act. The FY 2018 and FY 2019 performance targets will remain the same as for FY 2017.

Performance Goal 2C-1: Maintain the number & scope of materials viewed or accessed from MSPB's website that are designed to improve the practice and understanding of merit.			
<b>Measure:</b> Number of visits to the MSPB website pages involving information, materials, or guidance related to improving the practice and understanding of merit from MSPB's website.			
Results		Targets	
<b>FY 2012</b>	Recorded almost 260,000 visits and almost 3,800,000 hits to documents linked on the MSPs, PPPs, <i>IoM</i> newsletter, and training webpages.	<b>FY 2017</b>	Number of visits within $\pm 5\%$ of FY 2016 results.
<b>FY 2013</b>	Recorded over 554,000 visits and over 16 million hits to documents linked on the MSPs, PPPs, <i>IoM</i> newsletter, case report, and training webpages.	<b>FY 2018</b>	Number of visits within $\pm 5\%$ of FY 2017 results.
<b>FY 2014</b>	Recorded over 634,000 visits (12% more than in 2013) and nearly 11.8 million hits (30% fewer than in 2013) to documents linked on practice of merit and education webpages.	<b>FY 2019</b>	Number of visits within $\pm 5\%$ of FY 2018 results.
<b>FY 2015</b>	>655,400 visits; within $\pm 5\%$ of the total visits for FY 2014.		
<b>FY 2016</b>	892,379 visits to the MSPB website; over 36% more than in FY 2015.		
<b>FY 2017</b>	1,326,462 visits to the MSPB website; over 48% more than in FY 2016.		

Performance Goal 2C-2: Maintain number and scope of available educational materials and guidance.			
<b>Measure:</b> Number and type of merit systems educational materials and guidance MSPB makes available electronically or on MSPB's website.			
Results		Targets	
<b>FY 2012</b>	Materials include 4 training videos, 11 PPPs of the month, and several case reports. Additional materials included Chairman Grundmann's interview and article following the Senate hearing, live radio interviews of MSPB officials and staff, and oral argument page for <i>Latham v. USPS</i> .	<b>FY 2017</b>	Post or distribute electronically 5 new or updated textual or multimedia educational products.



<b>FY 2013</b>	13 or more new or revised documents related to merit/MSPs/PPPs, and at least that many documents related to legal process and appeals issues were made available on the website including: 3+ on the WPEA and changes to the Hatch Act; 2 PPP summaries including a summary of new PPP 13; 8 <i>Research Highlights</i> from MSPB study reports; 4+ on MSPB's new adjudication regulations; 4+ on MSPB's new appeal form; 5+ on furlough appeals.	<b>FY 2018</b>	Post or distribute electronically 5 new or updated textual or multimedia educational products.
<b>FY 2014</b>	Posted 8 <i>Research Highlights</i> (also counted under 2A-2); 9 radio interviews; letter and report regarding the VA SES legislation; webpage and training video for those interested in providing pro bono representation; materials for the studies research agenda (2); materials for the Special Panel oral argument (2); items related to MSPB's new jurisdictional regulations; 12 informational updates or agency administrative files related to furlough cases.	<b>FY 2019</b>	Post or distribute electronically 5 new or updated textual or multimedia educational products.
<b>FY 2015</b>	Posted 3 <i>Research Highlights</i> for merit systems study reports; regulations governing MSPB's jurisdiction; FY 2014 Annual Report; the Chairman's testimony on proposed VA legislation (S. 1082, S. 1117, and S. 1856); and updated the pro bono page and appellant Q&A on review of Board decisions by the Federal Circuit. Posted a link to the Guide on LGBT Discrimination Protections for Federal Workers because of our significant role in developing the guidance.		
<b>FY 2016</b>	Posted <i>Research Highlight</i> for reports on <i>SES Training, Nepotism, and MSPs: Guiding the Fair and Effective Federal Management</i> ; two FedNewsRadio interviews on merit systems studies reports; Chairman Grundmann's record testimony from MSPB's December 16, 2016 reauthorization hearing in the House; the Chairman's radio interview on VA SES appeals; the interim final rule on discovery in compliance proceedings; an updated guide to MSPs; and Organizational Functions and Delegations of Authority on the e-FOIA Reading Room page.		



<b>FY 2017</b>	Published interactive version of the <i>Adverse Action</i> report and <i>MSPs: Use in Guiding Fair &amp; Effective Management of the Workforce</i> ; two external reviews of MSPB's IT systems; an annotated diagram illustrating current Federal avenues of review or appeal for an adverse action; designation of new Vice Chairman Mark A. Robbins; guidance on lack of quorum; and the 2016 MPS data. We also updated/reorganized the e-FOIA Reading Room web page adding new information and created a new Privacy Act program webpage.		
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## Management Objectives

**Management Objective M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with competencies to perform MSPB's mission and support functions successfully.**

Results indicate this objective was **Met**. The 2017 Federal Employee Viewpoint Survey (FEVS) results for employee perceptions of workforce competencies, diversity, and employee engagement, and the 2017 Internal Survey (IS) results for inclusion, were within plus or minus 5 percent from the results from last year. The FY 2018 and FY 2019 performance targets will remain as for FY 2017.

Performance Goal M1-1: Ensure MSPB's workforce has competencies needed to perform its mission.			
<b>Measure:</b> Percent of employees who report that they have and that others in the workforce have the appropriate competencies needed to perform MSPB's mission on the FEVS or IS.			
Results		Targets	
<b>FY 2012</b>	2012 FEVS Competency Average = 68%	<b>FY 2017</b>	Maintain Competency Average within 5% of result from previous year.
<b>FY 2013</b>	2013 FEVS Competency Average = 63%	<b>FY 2018</b>	Maintain Competency Average within 5% of result from previous year.
<b>FY 2014</b>	2014 FEVS Competency Average = 64%	<b>FY 2019</b>	Maintain Competency Average within 5% of result from previous year.
<b>FY 2015</b>	2015 FEVS Competency Average = 79%		
<b>FY 2016</b>	2016 FEVS Competency Average = 68%		
<b>FY 2017</b>	2017 FEVS Competency Average = 71%		

Performance Goal M1-2: Maintain positive perceptions of diversity and inclusion by MSPB employees.			
<b>Measure:</b> Average percent agreement on diversity (FEVS questions) and workplace inclusion (IS questions).			
Results		Targets	
<b>FY 2012</b>	Conducted several events and MSPB Unity Day with activities designed to improve understanding of diversity and inclusion. 2012 FEVS Diversity Average = 66% 2012 FEVS Inclusion Average = 67% 2012 IS Inclusion Average = 73%	<b>FY 2017</b>	Maintain diversity and inclusion within 5% of result from previous year.

<b>FY 2013</b>	Conducted 9 diversity awareness events designed to improve inclusion and understanding of diversity. 2013 FEVS Diversity Average = 72% 2013 FEVS Inclusion Average = 65% 2013 IS Inclusion Average = 75%	<b>FY 2018</b>	Maintain diversity and inclusion within 5% of result from previous year.
<b>FY 2014</b>	Held events or issued information about numerous diversity/inclusion topics; held 6 Unity Day sessions; supervisors completed mandatory training on ADR and reasonable accommodation; issued revised Anti-Harassment Policy and Procedures. 2014 FEVS Diversity Average = 61% 2014 IS Inclusion Average = 77%	<b>FY 2019</b>	Maintain diversity and inclusion within 5% of result from previous year.
<b>FY 2015</b>	2015 FEVS Diversity Average = 71% 2015 IS Inclusion Average = 77%		
<b>FY 2016</b>	2016 FEVS Diversity Average = 67% 2016 IS Inclusion Average = 78%		
<b>FY 2017</b>	2017 FEVS Diversity Average = 66% 2017 IS Inclusion Average = 76%		

**Performance Goal M1-3: Strengthen and maintain employee engagement and address engagement issues identified in the FEVS.**

**Measure:** Average percent agreement on FEVS engagement questions.

<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Employee engagement was discussed in Chairman's all-hands meeting and individual office briefings by the Executive Director (ED) & Performance Improvement Officer (PIO). An engagement ombudsman was appointed to track agency engagement efforts; Executive Committee subcommittees established and began work. 2012 FEVS Engagement Index = 68%	<b>FY 2017</b>	Maintain engagement index within 5% of result from previous year.
<b>FY 2013</b>	Small group of agency leaders (ED, EEOD, GC, CB, PIO) established to review survey results and recommend appropriate actions; most subcommittee recommendations were approved and implemented or were under development. (e.g., 'Kudos' page, and Languages of Appreciation training for leaders and supervisors); MSPB IdeaScale Community implemented to improve the suggestions process; will use FEVS scores because 2012 FEVS & IS scores were consistent; 2013 FEVS Engagement Index = 68%	<b>FY 2018</b>	Maintain engagement index within 5% of result from previous year.
<b>FY 2014</b>	2014 FEVS Engagement Index = 62%	<b>FY 2019</b>	Maintain engagement index within 5% of result from previous year.
<b>FY 2015</b>	2015 FEVS Engagement Index = 74%		
<b>FY 2016</b>	2016 FEVS Engagement Index = 69%		
<b>FY 2017</b>	2017 FEVS Engagement Index = 70%		

**Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.** *(Beginning in FY 2018 this objective will include safety and security, which was formerly goal M4-1 and is included here as M2-2. FY 2017 results for prior performance goal M2-2 are also summarized here, but the goal itself moved to M4-1. FY 2017 results for safety and security are described under M4.)*

Results indicate this objective was **Met**. Monthly results averaged over the year indicated that 3.4 percent of funded positions were left vacant, which was considerably lower than the target of 8 percent or lower. The Acting Chief Information Officer (CIO) approved the performance work statement (PWS) for developing requirements for our new core adjudication business applications, which was submitted to the MSPB contracting officer. We drafted a PWS for moving our data center to the cloud, which is pending approval by the Acting CIO. We discussed a shared service possibility with another agency and conducted market research. MSPB partnered with staff from OMB's Office of the Federal CIO, including weekly calls or meetings regarding our IT modernization efforts. We released e-Appeal version 9.7 and a new version of Quick Case; modified the Media Application and Media Server; completed a document management system (DMS) upload application for litigation cases; and essentially completed an e-Case File application to automate compiling electronic case files sent to the courts, Department of Justice (DOJ), EEOC, or other agencies. We distributed new laptops to all employees at HQ and in the regional and field offices. We also assessed obtaining a cloud-based secure location for analyzing EHRI data. The FY 2018 and FY 2019 performance targets for the percent of funded positions left vacant will remain as for FY 2017. Beginning in FY 2018, this objective also will include individual and workplace safety and security (was M4-1, now relocated as M2-2). The FY 2018 and FY 2019 performance targets for individual and workplace safety and security will remain as for FY 2017.

Performance Goal M2-1: Develop fully-justified budgets & ensure resource accountability.			
Measure: Percent of funded positions vacant at the end of each month, averaged over the year.			
Results		Targets	
<b>FY 2012</b>	6% of 226 funded positions vacant, averaged over 12 months.	<b>FY 2017</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2013</b>	12% of 226 funded positions vacant, averaged over 12 months.	<b>FY 2018</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2014</b>	12% of funded positions vacant, averaged over 12 months. Will use the percent of funded positions vacant at the end of each month, averaged over 12 months; set targets for 2015-2016.	<b>FY 2019</b>	8% or fewer of funded positions vacant, averaged over 12 months.
<b>FY 2015</b>	4% of funded positions vacant, averaged over the 12 months (including temporary hires).		
<b>FY 2016</b>	8.7% of funded positions vacant, averaged over the year.		
<b>FY 2017</b>	3.4% of funded positions vacant, averaged over the year.		

<b>Performance Goal M2-2 (in FY 2017, this was M4-1): Offices, employees, and visitors are safe and secure from internal and external natural or man-made threats or emergencies.</b>			
<b>Measure:</b> Average percent of MSPB employees who agree with questions on the IS about their preparedness to ensure safety and security.			
<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Established a Safety and Security sub-committee of the Executive Committee based on FEVS results and recent security issues; developed an interim emergency protocol; all employees completed required Workplace Security Awareness training; rewrote Continuity of Operations Plan (COOP) and participated in Eagle Horizon exercise; conducted shelter-in-place drill. 2012 IS average agreement = 72%	<b>FY 2017</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2013</b>	Trained all employees on Active Shooter and Workplace Violence Awareness; implemented Visible Visitor badge program; conducted earthquake and shelter-in-place drills; updated/briefed COOP to all offices. 2013 IS average agreement = 78%	<b>FY 2018</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2014</b>	2014 IS Average Agreement = 89%	<b>FY 2019</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2015</b>	2015 IS Average Agreement = 87%		
<b>FY 2016</b>	2016 IS Average Agreement = 85%		
<b>FY 2017</b>	2017 IS Average Agreement = 90%		

**Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.**

*(Wording changed for FY 2018-2019.)*

Results indicate that this objective was **Met**. Results from the MSPB IS indicated a 13 percent increase from 2016 (above the targeted range of within 5 percentage points) in the employee ratings of the availability and reliability of the IT infrastructure. There was a 5 percent increase from 2016 (within the targeted range of within 5 percentage points) in employee satisfaction with internal IT support. We continued to use the cSupport help-desk ticketing system emphasizing that tickets not be closed unless the customer agrees. We delayed implementing iSupport, the successor system, until we completed the laptop replacement project. We also began planning for an automated survey of e-Appeal users. The FY 2018 performance targets for the availability and reliability of the IT infrastructure and IS ratings of satisfaction with internal customer support will remain as for FY 2017. In FY 2018, we will continue implementing iSupport, and continue developing a survey of e-Appeal users. The FY 2019 performance targets for all performance goals are TBD based on FY 2018 results.

Performance Goal M3-1: Ensure availability and reliability of MSPB IT systems, hardware, and applications.			
Measure: Average percent agreement with relevant questions on the MSPB IS.			
Results		Targets	
<b>FY 2012</b>	Prioritized systems to make tracking unscheduled downtime more meaningful and manageable; redesigned MSPB data center to minimize electrical, AC, and cabling issues; procured disaster recovery site (not operational at the end of the FY).	<b>FY 2017</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2013</b>	Average unscheduled downtime for key systems was 0.48%.	<b>FY 2018</b>	Maintain percent agreement within 5% of result from previous year.
<b>FY 2014</b>	Average unscheduled downtime for key systems was 1.13%.	<b>FY 2019</b>	TBD based on FY 2018 results.
<b>FY 2015</b>	The target for average unscheduled downtime was met (1.16%). However, MSPB had a significant disruption in its IT infrastructure resulting in the loss of the virtual environment and permanent loss of significant employee working and archived documents.		
<b>FY 2016</b>	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group (ITTG) to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and later to take advantage of IS data for measures related to meeting user business needs, internal customer service and availability and reliability of IT infrastructure. Took necessary IT actions to achieve the targets listed for 1A-1 (new APS report), 1A-3, 1A-6, 1C-3, and 2B-1. Goal 2C-3 was discontinued. The need for IT/Info Services expertise was one of the priorities in the draft Strategic Human Capital Plan submitted to agency leadership. The measure will be percent agreement with relevant questions on the MSPB IS.		
<b>FY 2017</b>	2017 IS rating is 58%, 13% higher than the 2016 result of 45%.		

Performance Goal M3-2: Ensure effective and efficient resolution of internal and external help-desk tickets.			
<b>Measure:</b> Proportion of internal and external IT service help-desk tickets resolved within required Service Level Agreement (SLA), using cSupport (or iSupport) ticketing system, and with agreement of the customer.			
Results		Targets	
<b>FY 2012</b>	92% of all tickets were resolved within SLA. 97% (3412/3502) of external and 81% (2403/2870) of internal tickets, respectively.	<b>FY 2017</b>	Continue use of cSupport system with emphasis on closure with customer agreement; begin plan to implement and improve transparency of new iSupport ticket system.
<b>FY 2013</b>	94% of all tickets were resolved within SLA. 98% (6097/6234) of external and 87% (2334/2677) of internal tickets.	<b>FY 2018</b>	Continue implementing iSupport.
<b>FY 2014</b>	92% (10,712/11,621) of all tickets were resolved within SLA.	<b>FY 2019</b>	TBD based on FY 2018 results.
<b>FY 2015</b>	Although 85% of help-desk tickets were resolved within SLA, the IT outage resulted in the loss of the virtual environment and the permanent loss of a significant number of employees' working and archived documents.		
<b>FY 2016</b>	Implemented cloud backup service for OneDrive and an isolated test environment; monitoring nightly backups; upgraded network hardware in many locations; began new IT Testing Group (ITTG) to test new technology and applications; assessed and adjusted M3 goals, measures, and targets for FY 2017 and beyond to take advantage on IS data for measure related to meeting user business needs, internal customer service, and availability and reliability of IT infrastructure. Necessary IT actions were taken to achieve the targets listed for 1A-1 (new APS report), 1A-3, 1A-6, 1C-3, 2B-1, and 2C-3 (goal discontinued). The need for IT/Info Services expertise was among the priorities in the Strategic Human Capital Plan (draft) submitted to agency leadership. In FY 2017, this performance goal and measure will be slightly reworded.		
<b>FY 2017</b>	Continued use of cSupport with emphasis on closing tickets only with customer agreement; began planning for implementation of iSupport to occur after completing agency-wide laptop replacement project.		

Performance Goal M3-3: Ensure satisfaction with internal IT support and services.			
<b>Measure:</b> Average percent agreement on relevant IS questions.			
Results		Targets	
<b>FY 2016</b>	New performance goal in FY 2017.	<b>FY 2017</b>	Maintain percent agreement within 5% of result from previous year.

<b>FY 2017</b>	2017 IS rating is 52%, 5% higher than 2016 result of 47%.	<b>FY 2018</b>	Maintain percent agreement within 5% of result from previous year.
		<b>FY 2019</b>	TBD based on FY 2018 results.

**Performance Goal M3-4: Ensure e-Appeal Online meets customer needs.**

**Measure:** Average percent agreement on automated e-Appeal customer survey questions.

<b>Results</b>		<b>Targets</b>	
<b>FY 2016</b>	New performance goal in FY 2017.	<b>FY 2017</b>	Begin developing and testing an automated survey for e-Appeal users.
<b>FY 2017</b>	Began developing automated survey for e-Appeal users.	<b>FY 2018</b>	Continue developing automated e-Appeal user survey.
		<b>FY 2019</b>	TBD based on FY 2018 results.

**Management Objective M4: Modernize core business applications to achieve electronic adjudication, migrate the data center to the cloud, and provide a web-based survey capability.**

*(Beginning in FY 2018, M4 will focus on IT modernization and the original performance goal for efficient adjudication (M2-2) is now located under this objective. The original performance goal for safety and security (M4-1) is located under M2, but the FY 2017 results are summarized and rated here.)*

Results for this measure indicate this objective was **Met**. The average of the percent positive responses from the IS questions on workforce and workplace safety and security was within the targeted range. Beginning in FY 2018, this objective was reworded to focus on IT modernization initiatives including new core business applications, migrating the data center to the cloud and providing a web-based survey capability. The new M4 objective includes two performance goals. M4-1 involves improving the efficiency of adjudication and previously was listed as M2-2. Performance Goal M4-2 is a new goal beginning in FY 2018 and focuses on improving infrastructure and network integrity and management. Although there was no FY 2017 target for this performance goal, information about accomplishments for FY 2017 are provided for context. In FY 2018, we will continue to develop requirements for the next generation of core business applications, including those to support e-Adjudication. In FY 2019, we will select and begin to implement these new core business applications. The FY 2018 performance target for M4-2 is to begin migrating the data center to a managed services environment in the cloud. The FY 2019 target is TBD based on FY 2018 results.

**Performance Goal M4-1 (was M2-2): Improve efficiency of adjudication case processing.**

**Measure:** Proportion of cases processed entirely electronically.

<b>Results</b>		<b>Targets</b>	
<b>FY 2012</b>	Interim indicators: 55% of initial appeals and 56% of pleadings filed electronically.	<b>FY 2017</b>	Develop requirements for the next generation of MSPB core business applications, including those to support e-Adjudication.
<b>FY 2013</b>	Interim indicators: 47% of initial appeals and 66% of pleadings filed electronically.	<b>FY 2018</b>	Continue to develop requirements for the next generation of MSPB core business applications, including those to support e-Adjudication.



<b>FY 2014</b>	Interim indicators: 55% of initial appeals and 83% of pleadings were filed electronically. Furlough cases were processed electronically in selected regional offices, 37 PFRs of furlough cases were filed electronically, and one furlough Board decision was filed electronically with the court. An RFI for e-Adjudication was drafted.	<b>FY 2019</b>	Select and begin to implement the next generation of MSPB core business applications, including those to support e-Adjudication.
<b>FY 2015</b>	Interim indicators: 56% of initial appeals and 80% of pleadings were filed electronically. Issued an RFI on e-Adjudication and Guidance on archiving electronic case files (ECFs). Developed a timeline for expanding ECFs and implementing mandatory e-filing for agencies and representatives. Timeline and project was suspended because of the IT outage in June 2015.		
<b>FY 2016</b>	Interim indicators: 61% of initial appeals and 81% of pleadings were filed electronically. Reinstated routine meetings on e-Appeal enhancements and e-Adjudication, and expanded ECFs Pilot to the Denver Field Office. Implemented new e-Appeal servers, and upgraded the e-Appeal LiveCycle and Active PDF document conversion/assembly software. Developed and implemented ECF marking capability and documentation in Quick Case and Law Manager and conducted training. Submitted personnel actions to support adding business analysis and other skills to help ensure expertise needed for e-Adjudication.		
<b>FY 2017</b>	Interim indicators: 61% of initial appeals and 82% of pleadings were filed electronically. The PWS for developing requirements for our new core adjudication business applications was approved by the Acting CIO and submitted to the MSPB contracting officer for solicitation in early FY 2018. Arranged two vendor demonstrations of appeals work-flow solutions. Completed work on e-Appeal release 9.7, released a new version of the Quick Case application with enhancements, and modified the Media Application and Media Server. Completed work on a new DMS Upload Application (for litigation cases in OGC) and essentially completed a new ECF application to automate the completion of ECFs for courts, DOJ, EEOC, etc. The Denver Field Office continues to process all cases electronically. Partnered with OMB's Office of the Federal CIO for weekly calls or meetings regarding this performance goal.		



Performance Goal M4-2: (New) Improve infrastructure and network integrity and management.			
Measure: Migrate the data center to a managed-services environment in the cloud.			
Results		Targets	
<b>FY 2017</b>	Drafted a PWS for moving our data center to the cloud. Discussed a shared service possibility with another agency and contacted various agencies & vendors regarding their experiences, recommendations, and capabilities. Partnered with OMB's Office of the Federal CIO regarding this performance goal. Collaborated with OPE and DOI to assess obtaining a secure cloud-based solution to analyze OPM data.	<b>FY 2017</b>	New performance goal for FY 2018.
		<b>FY 2018</b>	Begin migrating the data center to a managed services environment in the cloud.
		<b>FY 2019</b>	TBD based on FY 2018 results

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## Means and Strategies Needed to Accomplish Our Objectives

Over the next 4-5 years, MSPB will use the following means and strategies to accomplish its objectives. Selected means and strategies may be adjusted and may be emphasized in specific years, or may be used over the entire period. Strategies may be carried out by one or more offices. MSPB's approaches to complying with OMB Memorandum M-17-22 on reforming the Federal Government are included below under the appropriate strategic and management objectives.

### Strategic Goal 1

#### **Strategic Objective 1A: Provide understandable, high-quality resolution of appeals supported by fair and efficient adjudication and alternative dispute resolution processes.**

1. Provide effective, efficient, and appropriately transparent adjudication of appeals in our regional and field offices and at headquarters.
2. Effectively and efficiently implement changes in adjudicating cases in accordance with changes in statute, regulation, or policy (e.g., the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017).
3. Improve and maintain adjudication case processing data, data systems, practices, and policies to ensure valid and reliable data for management and reporting purposes that comply with standard data practices and statutes (e.g., GPRAMA, WPEA, etc.).
4. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for M3.)
5. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for M1.)
6. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
7. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
8. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
9. Provide effective and impartial ADR services (including settlement and mediation) to meet the needs of the involved parties.
10. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the U.S. Court of Appeals for the Federal Circuit, U.S. District Courts for mixed cases, and the U.S. Supreme Court.
11. Continue the automated survey process to sample and invite feedback from adjudication and ADR customers and make changes based on feedback, as appropriate.
12. Consider the future structure of regional and field offices including location, cost, schedule of lease renewals, availability of technology, and other factors to improve effectiveness and efficiency.
13. Explore the sharing of services and contracts between MSPB and its sister agencies (FLRA, EEOC, etc.) for court reporting and videoconferencing facilities.

**Strategic Objective 1B: Enforce timely compliance with MSPB decisions.**

1. Provide effective and efficient processing of requests to enforce MSPB decisions and improve the transparency of the enforcement process.
2. Ensure adequate adjudication expertise and capacity through strategic workforce planning. (Also a strategy for 1A and M1.)
3. Ensure continuity of expertise in legal and procedural issues through effective and efficient knowledge sharing and appropriate training of adjudication staff.
4. Review Board and court decisions, share significant changes with stakeholders, and determine and implement necessary changes to adjudication processes and procedures.
5. Monitor adjudication performance and ensure accountability for the adjudication process, the quality of adjudication decisions, timeliness of case processing, and customer satisfaction with the appeals process, within available resources.
6. Ensure effective representation of MSPB in cases brought before other adjudicatory bodies, such as the U.S. Court of Appeals for the Federal Circuit, U.S. District Courts for mixed cases, and the U.S. Supreme Court.

**Strategic Objective 1C: Conduct objective, timely studies of the Federal merit systems and Federal human capital management issues.**

1. Conduct independent, objective, and timely studies of the Federal merit systems and Federal management issues and practices in accordance with accepted research practices.
2. Periodically conduct a transparent process to develop and update the merit systems studies research agenda that includes feedback from studies stakeholders and customers. (See the recently published merit systems studies [research agenda](#) for FY 2015-2018.)
3. Expeditiously and appropriately report findings and recommendations from merit systems studies that provide value to the President, Congress, Federal HR policy-makers, practitioners, Federal managers, supervisors, and employees, and other stakeholders and that positively impact the merit systems and Federal human capital management.
4. Publish *IoM* newsletter editions, research highlights, 'Noteworthy' articles, and other products that address timely, focused information about Federal merit systems and workforce management issues.
5. Obtain (possibly through partnership with OPM) and maintain a survey capability with flexible survey design and administration that will operate Governmentwide in a secure, cloud-based environment to conduct research surveys and collect other similar data to support MSPB's merit systems studies mission.
6. Administer periodic Merit Principle Surveys (MPSs), and other specialized surveys, to assess and report on the overall health of the Federal merit systems, practice and understanding of merit in the workplace, and occurrence of PPPs.
7. Ensure MSPB has the analytic workforce needed to conduct high-quality objective studies, ensure the value and impact of study findings and recommendations, and perform essential program evaluation responsibilities through strategic workforce management. (Also a strategy for M1.)

**Strategic Objective 1D: Review and act upon the rules, regulations, and significant actions of OPM, as appropriate.**

1. Maintain review of OPM rules, regulations, and significant actions and take action, as appropriate, to ensure adherence to MSPs and avoidance of PPPs.
2. Publish the MSPB Annual Report including a review of the significant actions of OPM.

**Strategic Goal 2**

**Strategic Objective 2A: Inform, promote, and/or encourage actions by policy-makers, as appropriate, that strengthen Federal merit systems laws and regulations.**

1. Translate and deliver information from adjudication, merit systems studies, and OPM review into products designed to inform and influence actions by policy-makers that will support merit, improve adherence to MSPs, and prevent PPPs.
2. Track citations of and references to MSPB's work in professional, academic, trade, and media publications (print and electronic) to ensure information about MSPB's work in protecting merit systems is disseminated appropriately.

**Strategic Objective 2B: Support and improve the practice of merit, adherence to MSPs, and prevention of PPPs in the workplace through successful outreach.**

1. Translate information from adjudication, merit systems studies, and OPM review into outreach presentations and other products designed to inform and influence actions by practitioners and other stakeholders that will improve adherence to MSPs, prevent PPPs, and/or improve the understanding of a merit-based civil service or understanding of MSPB, its functions, and processes.
2. Conduct outreach activities within available resources (e.g., conference presentations, practitioner forums, mock hearings, briefings, etc.) designed to improve the practice and understanding of merit, MSPs and PPPs, and that provide value to participants.
3. Consider a centralized catalog of presentations and the electronic, web-based delivery of outreach presentations to improve efficiency of outreach and reduce travel costs.
4. Continue tracking outreach events, and note when MSPB presents material that results in Continuing Legal Education (CLE)/Continuing Education Unit (CEU) credits to audience members, which may promote cost effective methods to meet these requirements.
5. Consider and develop effective and efficient methods to improve the ability to obtain and use feedback from outreach participants and audience members to assess outreach success, improve quality of outreach, gather suggestions for improvement, and better address stakeholder needs, within resource constraints.

**Strategic Objective 2C: Advance the understanding of the concept of merit, the MSPs, and the PPPs, through the use of educational standards, materials, and guidance established by MSPB.**

1. Develop educational standards, materials, and guidelines on merit, MSPs, PPPs, and the merit-based civil service to ensure excellent Government service to the public.

2. Develop and make available information and materials about MSPB's adjudication processes, outcomes, and legal precedents to support the parties' ability to prepare and file thorough and well-reasoned arguments in appeals filed with MSPB.
3. Encourage agencies to use MSPB's educational standards, materials, and guidelines to implement educational programs for Federal employees and the public by recognizing agencies' merit systems educational efforts on MSPB's website, or in MSPB reports.
4. Develop and make MSPB products and educational information widely available through the website, social media outlets, and other appropriate avenues.

## Management Objectives

**Management Objective M1: Lead, manage, and develop employees to ensure a diverse, inclusive, and engaged workforce with the competencies to perform MSPB's mission and support functions successfully.**

1. Hire and retain a diverse and highly qualified legal, analytic/research, and administrative workforce that can effectively accomplish and support MSPB's knowledge-based work.
2. Provide employee orientation, on-the-job training, and other developmental and training experiences to ensure employees have the competencies necessary to perform MSPB's work, within budget constraints. Consider partnering with other agencies to obtain cost-effective training.
3. Use results from the Federal Employee Viewpoint Survey (FEVS), Internal Survey (IS), and MSPB IdeaScale Community, and apply leadership and management skills to strengthen and maintain a culture to support a diverse, inclusive, and fully-engaged workforce.
4. Considering the external factors and internal challenges that may affect MSPB's mission and operations, initiate and maintain a continual strategic human capital planning (SHCP) process to consider MSPB's most critical human capital requirements needed to achieve its mission and support functions and achieve its human capital management objectives.
5. Over the long-term, use the SHCP process to evaluate MSPB grade structure, assess need for Senior Executive Service (SES) positions, consider Board Member Senior Leader (SL) positions, streamline hiring authorities, use flexibilities (e.g., Not-to-Exceed (NTE) temporary positions, Intergovernmental Personnel Act (IPA) assignments, etc.), and assess partnering with other agencies for efficient and effective training.

**Management Objective M2: Develop budgets and manage financial resources to ensure necessary resources now and in the future, and ensure individual and workplace safety and security.**

1. Establish and communicate mission, support, and operational priorities to ensure achievement of agency objectives and goals.
2. Use people and budgetary resources effectively and efficiently to ensure adequate staff are available and have the competencies to accomplish our goals.
3. Communicate justification of resources (funds, people, operational requirements, and contingencies) necessary to accomplish MSPB's objectives (mission and support) including how resource levels and external factors (such as Governmentwide reform efforts) may impact MSPB performance.

4. Consider the structure of headquarters offices (including possible consolidation and/or outsourcing of support functions), and the structure and location of regional and field offices including statutory requirements, costs, availability of technology, best practices in operations, and other factors, to improve effectiveness and efficiency.
5. Develop policies and practices, educate and train MSPB employees, and conduct drills to ensure all know their role in ensuring individuals and the workplace are safe from natural and man-made threats to safety and security.
6. Consider options to maximize savings from MSPB's existing robust telework program.

**Management Objective M3: Improve and maintain information technology and information services programs to support agency mission and administrative functions.**

1. Develop, implement, and maintain stable and secure IT infrastructure (hardware, software, applications, processes, and systems) and information services programs, with sufficient resources and expertise (including but not limited to privacy, IT security, network administration, and records and information management), to meet customer business needs and provide effective and efficient MSPB adjudication, enforcement, studies, OPM review, and administrative support programs.
2. Gather customer feedback from e-Adjudication customers, and other internal and external users as needed, and make changes to relevant applications and functionality, as appropriate.
3. Ensure availability and reliability of MSPB's IT infrastructure (i.e., hardware, systems, servers, internet, applications, and file storage and retrieval).
4. Ensure effective and efficient support of internal and external IT customers.
5. Improve compliance with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)).
6. Continue to implement recommendations made following the IT outage in 2015.
7. Comply with OMB Memorandum M-17-35, "*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*," and related OMB and Department of Homeland Security (DHS) requirements.
8. Provide ongoing computer and professional development training for MSPB staff and IT personnel, respectively.

**Management Objective M4: Modernize core business applications to achieve electronic adjudication, migrate the data center to the cloud, and provide a web-based survey capability.**

1. Examine and assess current adjudication processes, agency records management processes, IT infrastructure, applications, resources, and expertise, and in consideration of changes in Governmentwide IT procurement and security requirements, develop requirements, plan for, and then implement new core adjudication business applications to support implementing e-Adjudication as a permanent shift from paper-based to automated electronic adjudication and records management. (Also a strategy for A1.)
2. Plan for and implement migration of MSPB's data center to the cloud.
3. Ensure access to and encourage increased use of e-Appeal Online; and continue to improve efficiency by shifting from paper-based adjudication work processes and products to automated electronic work processes and products.



4. Ensure secure storage and effective use of workforce data (from OPM and other sources) in a web-based environment.
5. Continue to implement recommendations made following the IT outage in 2015.
6. Comply with OMB Memorandum M-17-35, “*Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*,” and related OMB and DHS requirements.
7. Provide ongoing computer and professional development training for MSPB staff and IT personnel.
8. Consider consolidating, outsourcing, or reallocating resources and personnel to other mission-critical areas as a result of modernizing our core business applications and migrating our data center to the cloud.
9. Obtain (possibly through partnership with OPM) and maintain a survey capability with flexible survey design and administration that will operate Governmentwide in a secure, cloud-based environment to conduct research surveys to support MSPB’s merit systems studies mission and for other purposes. (Also a strategy for 1C.)

# Trends and Challenges that May Affect Agency Performance

## Significant External Trends and Issues

As stated earlier, the single most critical issue affecting MSPB is the lack of a quorum of Board members. Although this issue is discussed in the section on internal management challenges, the lack of a quorum is beyond MSPB's control, so also could be considered an external factor. Other than the lack of a quorum, the most significant external trends or issues affecting MSPB's ability to carry out its mission to protect the Federal merit systems include changes in law and jurisdiction, Government reform, workforce reshaping, budget, and retirement eligibility of the Federal workforce. MSPB is committed to performing its functions to the best of its ability and to justifying and requesting only those resources necessary to carry out its statutory responsibilities effectively and efficiently. If pending legislation does not change MSPB's workload or adjudication complexity, MSPB will require stable and sufficient resources in future years to be able to perform its statutory functions effectively and efficiently. However, additional resources might be needed to meet any new legislative changes to MSPB's adjudication procedures and simultaneously meet potential workload increases caused by other external factors.

**Changes in Law and Jurisdiction.** Recent changes in law and jurisdiction that have a direct impact on MSPB include the FY 2016 NDAA and the FY 2017 NDAA, and the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (AWPA). The WPEA has been recently amended by the "Follow the Rules Act," and the authority for a single Board member to extend stays at the request of the Office of Special Counsel (OSC).

The FY 2016 NDAA made several changes to the human resources authorities used to manage its civilian employees.<sup>7</sup> The changes include lengthening the probationary period for new Department of Defense (DOD) employees, making employee performance the most important factor in determining the order of removing employees in a RIF, delaying a within-grade-increase (WIGI) for the period of time the employee is not performing at an acceptable level of competence, and clarifying removals related to suitability determinations. DOD regulations implementing these changes have been recently issued. Processing appeals related to these issues from DOD employees might be a bit more complicated until any changes in legal precedent, if any, are made.

The NDAA for FY 2017 made additional changes in the management of DOD employees, and made changes to the definitions and limits of administrative leave applicable to all Federal employees.<sup>8</sup> This law also added MSPB appeal rights for the first time for up to 11,500 National Guard military technicians for various actions taken against them when they are not in a military pay status, or when the issue does not involve fitness for duty in the reserve component.<sup>9</sup> The law also repeals the waiver of the 180-day period after retirement before retired members of the armed forces may be appointed to DOD civilian positions. The Senate Report [114-255](#) for the repeal of the 180-day waiver cites MSPB's [report](#) on veterans' hiring entitled *Veteran Hiring in the Civil Service: Practices and Perceptions*.

The Administrative Leave Reform Act (section 1137 of the 2017 NDAA) limits the length of time an agency can place an employee on paid administrative leave to 10 work days in a calendar year, and it defines three new categories of paid leave: "notice leave", "investigative leave", and "weather

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<sup>7</sup> The NDAA for FY 2016, Pub. L. No. 114-92, § 1101 (RIF), § 1105 (probationary period), § 1106 (delay of WIGI), § 1086 (suitability adverse actions).

<sup>8</sup> The NDAA for FY 2017, Pub. L. No. 114-328 § 512 (gives appeal rights to military technicians), § 1111 (repeals 180-day waiver).

<sup>9</sup> Based on information provided to MSPB by the U.S. National Guard.

and safety” leave.<sup>10</sup> For purposes of Title 5 U.S.C., subchapter II of chapter 12 and § 1221 (individual right of appeal action in reprisal cases), placing an employee on investigative leave for a period of not less than 70 work days shall comprise a personnel action under paragraph (8) or (9) of 5 U.S.C. § 2302(b), thus essentially adding to the possible grounds on which an employee might file an appeal to MSPB based on the PPPs related to whistleblowing.<sup>11</sup> In addition, the 2017 NDAA expands MSPB’s jurisdiction to include a new type of appeal. Specifically, when an employee who is the subject of an investigation resigns prior to the completion of the investigation, and the investigation results in an adverse finding concerning the former employee, the head of an agency is required to make a permanent notation of the adverse finding in the former employee’s official personnel file (OPF). The former employee is entitled to notice of the adverse finding and an opportunity to challenge the finding and the notice of the adverse finding. If the agency upholds the adverse finding, the former employee is entitled to appeal the agency’s decision to notate the adverse finding in his or her OPF to MSPB. The OPF provisions became effective upon enactment.<sup>12</sup> The notation in the OPF, and the right to appeal it, assume added significance because Congress also created a requirement for agencies to check the OPF of any former employees before making hiring decisions.<sup>13</sup>

On June 23, 2017, Congress enacted the AWPB.<sup>14</sup> This law essentially replaced the Veterans Choice, Access, and Accountability Act of 2014 (VACA)<sup>15</sup> for purposes of SES appeals, and changes the requirements for appeals of adverse actions taken against VA employees, including how MSPB processes those appeals. The AWPB requires: (1) that performance-based actions be taken under chapter 75 rather than chapter 43; (2) lowers the standard of proof for all VA adverse actions from preponderance of the evidence to substantial evidence; (3) prevents MSPB from being able to mitigate the agency’s selected penalty; and (4) imposes a 180-day time limit for issuance of an MSPB initial decision. This Act also requires that actions taken against SES members be grieved in an internal process so that they are no longer appealable to MSPB. Additionally, the AWPB provides for mandatory disciplinary actions against supervisory VA employees “whom the Secretary, an administrative judge, the [MSPB], [OSC], an adjudicating body provided under a union contract, a Federal judge, or the Inspector General of the Department determines committed a prohibited personnel action.” The AWPB also clarifies that the definition of PPPs includes matters such as conducting a negative peer review, opening a retaliatory investigation, or taking a personnel action against an employee relating to the employee’s participation in an audit or investigation by the Comptroller General.

GAO issued a [report](#) on the WPEA in November 2016.<sup>16</sup> MSPB is making changes to its processes for recording and reporting WPEA data in response to issues found and recommendations made in GAO’s report.<sup>17</sup> Recently, the “Follow the Rules Act” amended the right-to-disobey provision of the WPEA. This provision originally protected covered employees

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<sup>10</sup> NDAA for FY 2017, § 1138.

<sup>11</sup> [5 U.S.C. § 2302\(b\)\(8\)](#) provides protections for whistleblowing, and (b)(9) provides protections for the exercise of or participation in an appeal, complaint, or grievance procedure or refusing to obey an order that would require violation of law.

<sup>12</sup> NDAA for 2017 § 1140.

<sup>13</sup> 5 U.S.C. § 3330(e).

<sup>14</sup> The Department of Veterans Affairs Accountability and Whistleblower Protection Act, Pub. L. [115-41](#).

<sup>15</sup> The Veterans Access, Choice, and Accountability Act of 2014 (VACA), Pub. L. [113-146](#). On May 9, 2017, the U.S. Court of Appeals for the Federal Circuit found portions of VACA relating to SES appeals to be unconstitutional, see [Helman v. Department of Veterans Affairs](#), 856 F.3d 920 (Fed. Cir. 2017).

<sup>16</sup> Government Accountability Office, Whistleblower Protection: Additional Actions Would Improve Recording and Reporting of Appeals Data ([GAO-17-110](#)), November 2016.

<sup>17</sup> Improvements to FY 2016 WPEA data have been made and are contained in the APR-APP for FY 2016-2018.

from retaliation for refusing to obey an order that would require the individual to violate a law.<sup>18</sup> The “Follow the Rules Act” now permits an employee to refuse to obey an order that would require him or her to violate not only a law, but also possibly a rule, or regulation.<sup>19</sup> This includes agency-specific rules and regulations, and is likely to be the subject of appeals brought to MSPB when agencies attempt to discipline an employee for failure to obey an order.

Two other recently enacted laws impact MSPB’s authorities and jurisdiction. On June 27, 2017, Congress authorized any remaining member of the Board, who was appointed by and with the advice and consent of the Senate, in circumstances in which the Board lacks a quorum, to extend the period of any stay granted under 5 U.S.C. § 1214(b)(1)(A).<sup>20</sup> On October 26, 2017, Congress enacted the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017.<sup>21</sup> This law creates a 14<sup>th</sup> PPP prohibiting access to medical records of another employee or an applicant for employment as part of, or otherwise in furtherance of, any conduct described in PPPs 1 through 13. In addition, this law: (1) requires agency heads to propose disciplinary action against supervisors who have engaged in whistleblower retaliation, related to 5 U.S.C. § 2302(b)(8)(9), or (14); (2) provides certain whistleblower protections to probationary Federal employees; (3) provides guidelines to enhance Federal employee awareness of Federal whistleblower protections; and (4) enhances access of information by the OSC.

These enacted, proposed, and contemplated changes in law and jurisdiction could impact the merit systems, management of the workforce, and/or MSPB functions or operations directly or indirectly. Such changes are likely to affect MSPB’s appeals workload, the complexity of cases it adjudicates, the need for changes in MSPB procedures, and the need for additional MSPB resources, as we have experienced in years past. Changes in law and jurisdiction also emphasize the importance of MSPB’s responsibility to conduct studies of Federal merit systems and exercise its statutory authority to review OPM’s significant actions to ensure that the Federal workforce continues to be managed in accordance with MSPs and free from PPPs. These changes also increase the importance of MSPB’s responsibility to promote merit and educate employees, supervisors, managers, and leaders on the merit systems, MSPs, PPPs, and MSPB appellate procedures, processes, and case law. These outreach and educational functions improve workforce management over time and may reduce the time and cost of processing appeals for agencies, appellants, and the Government. MSPB will continue to track Congressional activity and will use its body of legal precedent and objective research findings to assess and identify the potential impact of changes in civil service law on MSPB’s operations and mission.

**Budget and Workforce Reshaping.** On March 13, 2017, the Administration issued Executive Order 13781, *Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch*.<sup>22</sup> OMB followed with implementing guidance on April 12, 2017, in OMB Memorandum M-17-22, “*Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*.”<sup>23</sup>

Certain actions taken by agencies as part of these reform efforts are likely to have an effect on MSPB’s workload. Workforce reshaping actions can result in adverse actions affecting Federal employees, and affected employees may file appeals of those actions with MSPB. For example, Governmentwide budget sequestration in 2013 led to tens of thousands of furloughs of Federal employees, which, in turn, led to a huge increases—almost five times our normal workload—in the

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<sup>18</sup> 5 U.S.C. § 2302(b)(9)(D).

<sup>19</sup> The Follow the Rules Act (Pub. L. [115-40](#)), enacted on June 14, 2017.

<sup>20</sup> Pub. L. [115-42](#).

<sup>21</sup> Pub. L. [115-73](#).

<sup>22</sup> Executive Order 13781, <https://www.federalregister.gov/documents/2017/03/16/2017-05399/comprehensive-plan-for-reorganizing-the-executive-branch>.

<sup>23</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>.

number of MSPB appeals. RIF actions, and some cases involving VERA or VSIP are also appealable to MSPB. Historical trends indicate that increasing RIFs would lead to an increase in the number of appeals filed to MSPB, and RIF appeals are often more complex than some other types of appeals. Workforce reshaping also may affect workforce management, employee engagement, and employee effectiveness. Maintaining strong MSPB merit systems studies and OPM review functions helps ensure the workforce continues to be managed under the MSPs and avoids PPPs. Indeed, OMB's memo references several MSPB merit systems study reports, which provide useful information to agencies as they implement changes to achieve the memo's objectives. In addition, MSPB's OPE Director, along with representatives from OMB and OPM, visited most CFO-Act agencies to answer questions about the use of these flexibilities.

**Retirement Eligibility of the Federal Workforce.** For many years, the proportion of Federal employees who are eligible to retire has been increasing. According to a 2014 GAO report, the proportion of retirement-eligible Federal employees is increasing and by September 2017, nearly 600,000 (about 31 percent) would be eligible to retire Governmentwide.<sup>24</sup> Although Federal employees usually do not retire immediately when they become eligible,<sup>25</sup> OPM data indicate that between 2012 to 2014, an average of over 35,000 more employees were added to the retirement rolls each year than the average that were added each year between 2009 to 2011.<sup>26</sup> In a later report, OPM found that from 2006 to 2015, executive branch retirement increased by 8.1 percent (60,253 to 65,107).<sup>27</sup> It is interesting to note that in FY 2014, the Federal civilian workforce had a higher proportion of employees who are 50 and older (44.5 percent) than the U.S. civilian workforce (33.5 percent).<sup>28</sup> Therefore, although we do not necessarily predict a dramatic rise in Federal retirements, retirement eligibility in the Federal civil service must continue to be monitored.

As retirements increase, for whatever reasons, we expect to see an increase in retirement appeals. Indeed, from 2011 to 2015, MSPB had slight increases each year in the number of retirement initial appeals received. The number of retirement claims filed with MSPB dropped in FY 2016. However, recently published research indicates that retirements increase in the first three years of a new Administration.<sup>29</sup> OPM's backlog of retirement claims varies considerably, but it generally has decreased since 2012, thus increasing the number of retirement decisions that may be appealable to MSPB.<sup>30</sup>

## Internal Management Challenges

The single most significant issue affecting MSPB is the lack of a quorum of Board members, which is discussed here as a human capital issue. Other than the lack of a quorum, the most significant issues and challenges affecting MSPB's ability to carry out its mission to protect the Federal merit systems include other human capital issues and IT stability, security and modernization. These internal management challenges will be considered in MSPB's efforts to address the objectives in the OMB

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<sup>24</sup> Government Accountability Office, Federal Workforce: Recent Trends in Federal Civilian Employment and Compensation ([GAO-14-215](#)), January 2014.

<sup>25</sup> Federal News Radio, [Feds ride the money, benefits wave longer than expected](#), April 29, 2015.

<sup>26</sup> OPM, [Retirement Statistics: FY 2000-2013](#) and data by email for 2014.

<sup>27</sup> OPM, [Retirement Statistics: FY 2006-2015](#), March 2016.

<sup>28</sup> Government Accountability Office, Federal Workforce: Lessons Learned for Engaging Millennials and Other Age Groups, [GAO-16-880T](#) (September 29, 2016).

<sup>29</sup> Bolton, A., Figueiredo, J.M., and Lewis, D., National Bureau of Economic Research working paper, [Elections, Ideology, and Turnover in the U.S. Federal Government](#) (December 2016), and also the same authors published in Harvard Business Review, [Will Federal Employees Work for a President They Disagree With?](#), February 2017.

<sup>30</sup> Click to see [current retirement claims](#) processing statistics.



**Human Capital Issues.** As described earlier, the lack of a quorum of Board members is the single most significant issue effecting MSPB. MSPB has been without a quorum of Board members since January 8, 2017. The lack of a quorum prevents the Board from issuing PFRs and other decisions at headquarters and issuing final reports of merit systems studies. The lack of a quorum prevented us from assessing or rating the FY 2017 results for several performance goals and one strategic objective. In addition, the lack of a quorum prevents MSPB from promulgating regulations for Congressional changes in our jurisdiction and processes. Nonetheless, we continue to strive in every way possible to function within those limitations. For instance, the Board’s AJs continue to adjudicate appeals, conduct hearings, and issue initial decisions. The Board at HQ continues to receive PFRs and to draft recommended final orders in those cases. The Acting Chairman continues to review and vote on those cases, which await the new Board members’ arrival. The Board’s Office of Policy and Evaluation continues to conduct surveys, do research, and draft new reports of merit systems studies that will be subject to the new Board members’ approval. The Board’s executive, financial, and administrative operations also continue to function. As a result, the Board continues to further its critical mission during this time of significant transition.

MSPB’s enacted budgets for FY 2014-2016 enabled it to rebuild and retain its workforce, address mission requirements, and begin to prepare for the future. MSPB began a sustained strategic human capital planning process in FY 2016 focused on its most critical human capital requirements that will help ensure it has stable and sufficient resources to perform its statutory functions effectively and efficiently. Even with the increase in positions provided for in the FY 2014-2016 appropriations, nearly 22 percent of MSPB employees, including approximately 27 percent of our permanent AJs and managers involved with processing initial appeals, are eligible to retire in the next two years. MSPB is committed to maintaining the quality of its decisions. MSPB also will continue to process initial decisions, but will not be able to issue decisions in PFRs and other types of cases at HQ until a quorum is restored. Indeed, we have determined MSPB is not setting FY 2018 targets for PFR processing, enforcement case processing, and number of reports of merit systems studies published. Because quality of initial appeals is based on the issuance of PFR decisions, we also are not setting a FY 2018 target for this quality goal. Once a quorum is restored, we will determine the most appropriate measures and targets for these performance goals.

MSPB also needs to ensure it has the IT and information services resources and expertise to: ensure a stable and secure IT infrastructure; perform the IT and information services actions needed for agency performance goals; and to effectively implement MSPB’s IT modernization efforts, which include e-Adjudication and electronic record-keeping, and a secure, cloud-based survey capability. (See additional information about the status of MSPB’s IT infrastructure and staff in the next section.) MSPB’s ability to conduct merit systems studies, obtain a survey capability for improved survey data collection that supports merit systems studies, and conduct program evaluation are currently competing for fewer existing analytic resources.

Several other MSPB employees who hold key leadership positions or who are serving in one-deep critical positions are eligible to retire in the near future. Although MSPB has been able to recruit well-qualified individuals for its adjudicatory and other professional positions, it nevertheless takes 2-3 years for these new staff to reach full performance level. MSPB began a sustained strategic human capital planning process to focus on its most critical long-term human capital needs, which include maintaining the pool of newer adjudication employees, planning for

<sup>31</sup> <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>

continuing the operations of functions performed by employees in one-deep critical positions, and improving the availability of IT expertise. By maintaining a human capital planning process, the agency will be able to proactively address and evaluate factors that may have an effect on our mission and daily operations.

The success of these efforts depends on continued stability in funding for FY 2018 and beyond to retain expertise, improve competencies, sustain employee engagement, continue to improve our processes, and at the same time continue to perform our statutory and support functions effectively and efficiently. Retaining resources is even more critical, given the recent and possible future legislative changes that may affect our jurisdiction and processes.

**Information Technology Stability, Security, and Modernization.** We are committed to transitioning to 100 percent electronic adjudication (e-Adjudication) to process cases more efficiently and improve service to our customers. In addition, e-Adjudication will support MSPB's efforts to comply with Governmentwide initiatives to improve efficiency, effectiveness, accountability, and customer service; Federal paperwork reduction; and records management directives requiring that agencies convert records to electronic format. MSPB is also focused on ensuring it has the IT infrastructure and the IT and information services expertise to execute its mission and modernize its systems including implementing e-Adjudication and obtaining a viable, secure, cloud-based survey capability. Beginning in FY 2017, we pivoted away from continuing to customize our existing legacy business applications for case management, document management, and document assembly, each of which is nearing its end-of-life. Instead, we will develop comprehensive requirements to identify the "next generation" of MSPB's core adjudication business applications to fully enable e-Adjudication of MSPB appeals (while retaining the option for paper when necessary). In the end, this effort will yield important potential improvements in technology, systems, productivity, and efficiency, and it will require a significant initial investment of resources. The e-Adjudication initiative is a multi-year effort.

MSPB must administer surveys of the Federal workforce and others to provide empirical data to support its merit systems studies research responsibilities. Implementing past surveys has been challenging due to limited internal IT expertise needed to support the survey process and ensure compliance with new and rapidly changing IT security requirements. Meeting these security requirements is necessary to obtain the cooperation and support of the MPS by Federal agencies. This issue is especially sensitive when millions of current and former Federal employees have experienced breaches of personnel data managed and housed by OPM. Long-term effectiveness of the merit systems studies program requires that MSPB have a more stable and flexible capacity to securely collect survey and other similar data in a cloud-based environment. MSPB's ability to support procurement of such a survey capability, conduct merit systems studies, and support program evaluation is competing for fewer existing analytic and IT resources.

MSPB's 2017 IS results indicated that employees have more positive views of the availability and reliability of MSPB's IT infrastructure. Employees also have positive views of their new laptops and believe the internal communication about IT issues has greatly improved. Nonetheless, there continue to be challenges in ensuring a stable and reliable IT infrastructure and moving forward with our modernization efforts. Based on IS results and external assessments, MSPB included IT expertise as a critical requirement in its strategic human capital plan.



# Program Evaluation and Performance Measurement

## Program Evaluation

MSPB programs broadly affect Federal merit systems and Federal management, and they generate significant value for Federal agencies and the public. Effective program evaluation is critical to ensuring that MSPB can continue to achieve its mission effectively and efficiently and to provide value now and in the future. MSPB is committed to high-quality program evaluation. However, ensuring our ability to perform our statutory mission, as well as ensuring compliance with requirements of the GPRAMA and recent program evaluation guidance from OMB, could require increased resources and program evaluation staff.

A relatively small increase in MSPB's program evaluation resources and staff could likely yield a large return in efficiency and cost savings for MSPB. In turn, this will improve the value MSPB brings to agencies, Federal employees, individual parties to cases filed with MSPB, and to the public. If internal program evaluation resources are not available, contractor support is a viable option for conducting tasks associated with program evaluations. This option is most useful when the evaluation topic is technical in nature, beyond the scope of knowledge of existing program analytic staff, or when the evaluation is focused on program evaluation itself or on the office within which program evaluation activities are conducted.

## Performance Measurement: Verifying and Validating Performance Information

Most quantitative measures of MSPB's adjudication performance come from its automated case management system based in Law Manager (LM), which tracks location, timeliness, outcomes, and other information about cases filed with MSPB. Other quantitative and qualitative performance measures are reported by MSPB's program offices. MSPB also collects external customer satisfaction data from adjudication, ADR and (more rarely) merit systems studies customers and stakeholders and from internal customers of our administrative programs. Several of MSPB's management performance goals use data from OPM's FEVS. MSPB also has an active internal survey program, which measures various management performance goals contained in MSPB GPRAMA reports, and provides customer feedback and customer service information on internal administrative programs such as IT, information services, human resources, facilities, travel, procurement, and EEO programs.

MSPB has made many recent improvements in performance measurement. Even so, given the results of the GAO [report](#) on the WPEA (see below), MSPB needs to develop an agency-wide performance measurement policy to improve oversight, accountability, and coordination of performance measurement processes. Such a policy will help ensure the consistency, validity, and verifiability of the performance data that are used to manage MSPB programs and are included in agency reports. MSPB will coordinate development of an agency policy for performance measurement with findings from the data integrity and regional case processing evaluation and the results of the consultation on processing conducted to develop requirements for new core adjudication business applications.

## Results of Program Evaluation Activity

**GAO assessment of processing WPEA cases at MSPB.** Under the WPEA, the GAO was required to evaluate the implementation of the law including changes in the number of cases filed with MSPB, the outcomes of such cases, and other issues. GAO conducted its review during the

latter part of FY 2016 and released its final report in November 2016.<sup>32</sup> GAO found that MSPB's data for WPEA cases required improvement to ensure the accuracy of reporting whistleblower appeals received and closed. The report recommended that MSPB: (1) update its data entry user guide to include additional guidance and procedures, and (2) add a quality check in its data analysis and reporting process to better identify discrepancies. MSPB has been, and will continue to make, improvements in recording these data.

The GAO report also provided a partial assessment of LM. In addition, MSPB is undertaking an internal assessment of the data entry and data checking processes used for adjudication case management, including, but not limited to, whistleblower data. Finally, MSPB's efforts to define the requirements necessary for updating its core adjudication business applications (see below) will include information about LM that will serve as a foundation for updating the data entry user guide and defining appropriate quality checks in the reporting process. Thus, developing requirements necessary to update our core adjudication business applications, including a next-generation electronic case management system, will serve as a surrogate evaluation of LM (which evaluation was scheduled to begin in FY 2016). Beyond that, no specific evaluation of LM as our existing case management system will be performed since it is likely that LM will be replaced with a new core business application in the next 2 years. In addition, the issues raised in our discussions with GAO during its review of the WPEA data emphasized the need to develop and finalize an agency-wide performance measurement policy focused on broad standards and accountability to verify and validate performance data.

**Define adjudication process/develop requirements for new core adjudication business applications.** This activity involves validating the business and technical requirements for these applications, i.e., our case management, document management, and document assembly systems, to support e-Adjudication, and developing a prioritized path for upgrades necessary to support our business processes. We began this activity in FY 2017 by developing a PWS to create our requirements documentation.

### **Program Evaluation Status**

Based on the availability of resources, MSPB will continue independent program evaluations of its mission and administrative support programs and assess its performance measurement systems and processes over the next few years. A schedule for these activities in FY 2018-FY 2022 is provided below along with an update on the status of ongoing projects.

### **Proposed Program Evaluation and Performance Measurement System Review Schedule**

Assuming sufficient resources are available, MSPB will develop an agency policy for performance measurement, verification, and validation beginning in FY 2018. Based on the availability of resources, MSPB will undertake independent program evaluations of its mission and administrative support programs and assess its performance measurement systems and processes over the next few years. A projected schedule for these activities through FY 2019 is provided below.

<b>Program/Performance Measurement System</b>	<b>Evaluation Start Year</b>
Data integrity & case processing in the regional and field offices	2017
Functions of the Office of Regional Operations	2018 (from 2020)

<sup>32</sup> Government Accountability Office, Whistleblower Protection: Additional Actions Would Improve Recording and Reporting of Appeals Data, GAO-17-110, November 2016.

MSPB Program Evaluations		
Program/System to Evaluate	Evaluation Start Year	Status
Law Manager case management system (as part of updating our core adjudication business applications to support e-Adjudication)	2016	Initial input from GAO report on WPEA, continuing under auspices of defining requirements for new core adjudication business applications and more broadly with a new agency-wide performance measurement policy, including verifying and validating data. MSPB will take steps to make critical changes in Law Manager to ensure implementation of the GAO recommendations. However, further action will await the results of ongoing activities.
IT program planning & implementation (in conjunction with updating business applications to support e-Adjudication; moved from 2018 due to IT issues in 2015)	2016	Initial information was contained in external reports on our IT infrastructure by Kelyn, VMware and Cask. Additional information will be provided in conjunction with defining and planning for a new external data center and development of requirements for core adjudication business applications. IT staff expertise was listed as a critical issue in MSPB's Strategic Human Capital Plan. In addition, the internal survey contains some questions relevant to IT program planning and implementation. Next steps in this program evaluation will await results from ongoing activities and direction from the new Chairman.
Case processing and data integrity in the regional and field offices	2017	Initial information was provided by the GAO WPEA report. Additional information will be provided in the internal assessment of data entry and data entry processes for case management data. Further information will be provided in our efforts to define the adjudication process as part of the initiative to develop requirements for new core adjudication business applications. Results of these efforts will comply with GAO's recommendations from the WPEA report and the development of an agency-wide performance measurement policy. In addition, the automated process for surveying initial appeals adjudication and ADR customers will provide data to inform next steps in this program evaluation. MSPB's adjudication process also may be affected by legislative changes in the appeals process including specific timeliness requirements. Next steps in this program evaluation, including changes in scope, will await results from ongoing activities, changes in legislation, and direction from the new Chairman.

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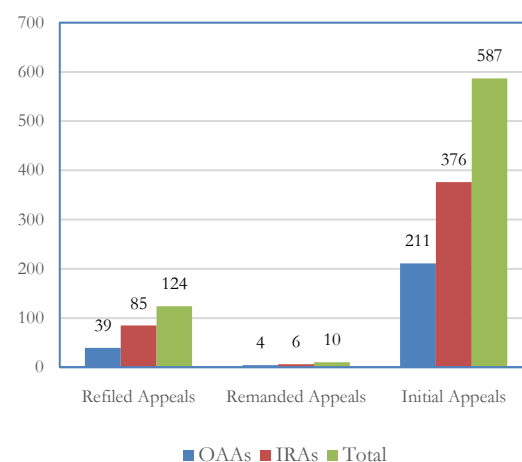
## Appendix A: Information about FY 2017 Whistleblower Appeals

In accordance with the WPEA, MSPB is providing this information about appeals in FY 2017.<sup>33</sup> This report reflects cases processed from October 1, 2016, through September 30, 2017, and includes data on receipts and outcomes in initial appeals and PFRs in which violations of 5 U.S.C. § 2302(b)(8) and/or 5 U.S.C. § 2302(b)(9)(A)(i), (B), (C), or (D) were alleged.<sup>34</sup> Adjudicating appeals is an ongoing process and appeals are often closed in a different year than that in which they were received. Therefore, the figures for cases received (i.e., Figure 1 for appeals and Figure 9 for petitions for review) and outcomes of cases processed (i.e., Figures 3, 6, and 10) in any given year will not be comparable. In addition, data of PFR outcomes reflect cases closed prior to January 8, 2017, after which no PFRs were issued due to the lack of a quorum. These PFR outcome data will not be comparable to similar WPEA data in previous reports.

There generally are two types of appeals that can involve claims of reprisal under sections 2302(b)(8) and (b)(9). An otherwise appealable action (OAA) appeal involves an adverse action that is directly appealable to the Board, such as a removal, demotion, or suspension of more than 14 days. In such an appeal, MSPB will review both the appealable action and the claim of reprisal for engaging in protected activity as an affirmative defense. In an individual right of action (IRA) appeal, the individual is subject to a personnel action and claims that the action was taken in reprisal for engaging in protected activity, but the personnel action itself is not one that is directly appealable to the Board (e.g., a reassignment with no reduction in pay or grade).<sup>35</sup> In this kind of case, the individual can appeal the claim of reprisal to the Board only if he or she files a complaint with the Office of Special Counsel (OSC) first, and OSC does not seek corrective action on the individual's behalf.<sup>36</sup>

Figure 1 displays data on the number and types of appeals that MSPB received in FY 2017 in which violations of 5 U.S.C. § 2302(b)(8) and/or (b)(9) were alleged. Appeals “received” by a regional or field office fall into three categories: initial appeals, remanded appeals, and refiled appeals. “Initial appeals” are new appeals filed by an appellant for the first

**Figure 1: FY 2017 Appeals Received in Regional/Field Offices with Claims under 5 U.S.C. § 2302 (b)(8) and/or 2302(b)(9)**



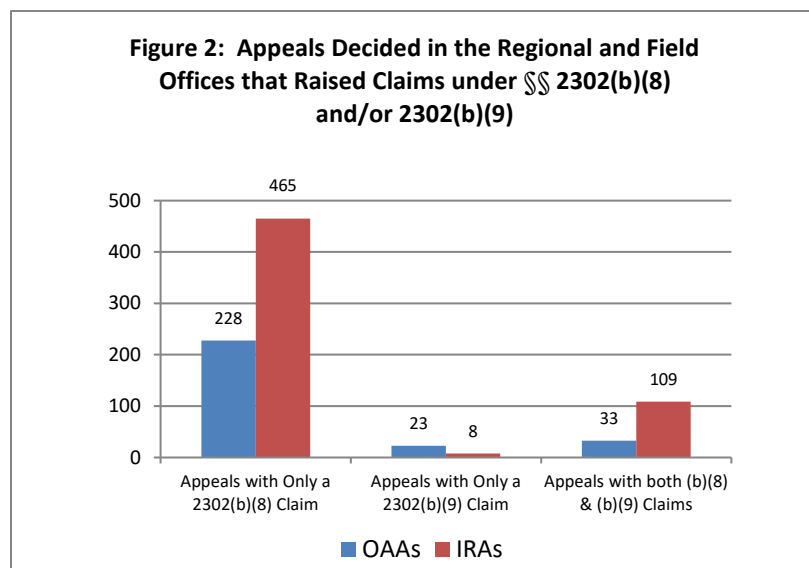
<sup>33</sup> On November 28, 2016, the Government Accountability Office (GAO) published a report, GAO-17, which identified certain weaknesses in MSPB's recording and reporting of whistleblower appeals and made recommendations to improve the quality of the reporting, to which MSPB responded in agreement. We implemented additional levels of review for the FY 2016 and FY 2017 data and updated our reporting methods for these data points. MSPB will continue to review and improve its methods for data collection and reporting throughout FY 2018.

<sup>34</sup> This report generally refers to claims raised under section 2302(b)(9); however, this report does not include claims raised under section 2302(b)(9)(A)(ii), as 5 U.S.C. § 1221(a) allows appellants to seek corrective action from MSPB as a result of prohibited personnel practices described only in section 2302(b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D).

<sup>35</sup> In *Agoranos v. Department of Justice*, 119 M.S.P.R. 498 (2013), the Board explained that an appellant in an IRA appeal also can seek relief related to a personnel action that could have been appealed directly to the Board, when the appellant knowingly chooses to seek relief from OSC before filing at MSPB.

<sup>36</sup> Complaints in IRA appeals go first to OSC for review and, if warranted, OSC conducts an investigation. According to OSC, it is during this process that agencies often choose to take corrective action or settle an issue informally before OSC files a case with MSPB. MSPB adjudicates IRA appeals that have had the chance to be resolved while at OSC, but OSC did not seek corrective action.

time and thus represent new cases alleging reprisal. “Remanded appeals” are appeals that were previously adjudicated by a regional or field office, but which have been remanded by the Board at MSPB headquarters on petition for review, or by a Federal Circuit Court on appeal of a final Board decision. “Refiled appeals” are appeals that are refiled – by the appellant or on the AJ’s own motion – because they were previously dismissed without prejudice (DWOP) to refiling. A DWOP is a procedural option that allows for the dismissal and subsequent refiling of an appeal, often to allow the parties more time to prepare for the litigation of their cases. Remanded or refiled appeals are not new cases; they are separately docketed appeals that are related to initial appeals filed earlier in the same FY or in a prior FY. If the related initial appeal was filed in the same FY, it would be included in the number of “initial appeals.” Because the regional and field offices must process remanded and refiled appeals and issue decisions in these appeals, these appeals are considered part of MSPB’s workload of appeals containing claims under sections 2302(b)(8) and/or 2302(b)(9).



An appellant can file an appeal alleging a violation of section 2302(b)(8) only, a violation of section 2302(b)(9) only, or a violation of both.<sup>37</sup> Figure 2 depicts the number of appeals, both OAA appeals and IRA appeals, that were decided in FY 2017 in the regional and field offices and whether the appeal contained (a) a claim(s) under section 2302(b)(8) only; (b) a claim(s) under section 2302(b)(9) only; or (c) claims under both sections 2302(b)(8) and (b)(9).

Figure 3 breaks down the totals displayed in Figure 2 for OAA appeals by depicting the outcomes of OAA appeals decided in the regional and field offices in which violations of section 2302(b)(8) and/or (b)(9) were alleged. It is important to note that the outcome of an OAA *appeal* is separate from the outcome of a section 2302(b)(8) or (b)(9) *claim*.<sup>38</sup> An OAA appeal can be dismissed for a variety of reasons that have nothing to do with the merits of any reprisal claim raised therein. For example, the appeal may be untimely filed, the action or the appellant might be outside the Board’s appellate jurisdiction, or the appellant might have made a binding election to challenge the action in another forum (such as through a negotiated grievance or arbitration procedures). This figure includes appeals that were withdrawn and appeals that were dismissed without prejudice. Cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<sup>37</sup> Sections 2302(b)(8) and (b)(9) prohibit reprisal against an employee or applicant for employment based on different types of protected activity. Section 2302(b)(8) prohibits reprisal because of any disclosure that the employee or applicant reasonably believes evidences certain enumerated categories of wrongdoing. Employees who allege a violation of (b)(8) are typically referred to as alleging “reprisal for whistleblowing.” Section 2302(b)(9)(A)(i) prohibits reprisal because of the exercise of any appeal, complaint, or grievance right with regard to a violation of section 2302(b)(8). Section 2302(b)(9)(B) prohibits reprisal because of testifying for or otherwise assisting any individual in the exercise of any right under section 2302(b)(9)(A)(i) or (ii). Section 2302(b)(9)(C) prohibits reprisal because of cooperating with or disclosing information to the Inspector General of an agency or the Office of Special Counsel. Section 2302(b)(9)(D) prohibits reprisal for refusing to obey an order that would require the individual to violate a law.

<sup>38</sup> The WPEA requires MSPB to report outcomes of appeals; however, when possible, MSPB additionally reports and summarizes the outcomes of claims.



Figure 3: Outcomes in OAA Appeals Decided in the Regional and Field Offices						
Types of Claim(s) Raised	Dismissed Without Prejudice	Settled	Withdrawn	Dismissed (Other than DWOP)	Adjudicated on the Merits	Total
Section 2302(b)(8) Only	30	46	14	80	58	228
Both sections 2302(b)(8) & (b)(9)	6	4	0	6	17	33
Section 2302(b)(9) Only	4	7	2	5	5	23

In a case in which an appellant raises both section 2302(b)(8) and (b)(9) claims, the outcomes of those claims may differ.<sup>39</sup> Therefore, we are reporting the outcome of both (b)(8) and (b)(9) claims for cases in which both claims were raised and the OAA appeal was adjudicated on the merits, as depicted in Figures 4 and 5 below.

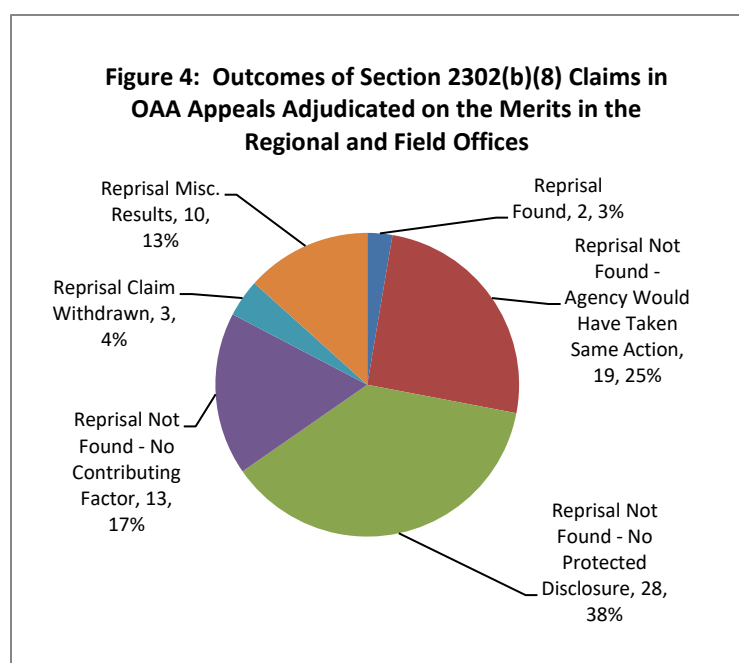


Figure 4 displays the resolution of section 2302(b)(8) claims within the 75 OAA appeals<sup>40</sup> adjudicated on the merits in the regional and field offices.<sup>41</sup> The outcome of an OAA *appeal* is not necessarily synonymous with the outcome of a reprisal *claim*; therefore, the fact that reprisal is not found in an OAA appeal does not necessarily mean that the appellant obtained no relief. For example, in a removal appeal in which the appellant alleges reprisal, the Board could reverse the removal action because the agency failed to prove that the appellant committed the charged misconduct, or it could mitigate the removal penalty, while also finding that the appellant failed to establish reprisal.

<sup>39</sup> For example, an appellant may allege that he was removed in violation of section 2302(b)(8) for disclosing to his supervisor his belief that a practice at the agency endangered public health. In the same appeal, he also may allege that he was removed in violation of section 2302(b)(9) for testifying in a coworker's MSPB appeal which involved remedying a violation of section 2302(b)(8). In such a case, the appellant may decide to withdraw his section 2302(b)(9) claim, but prevail on his section (b)(8) claim. Under that scenario, the outcome of the section (b)(9) claim would be "withdrawn," whereas the outcome of the section (b)(8) claim would be "corrective action ordered."

<sup>40</sup> This figure displays the outcomes of all OAA appeals adjudicated on the merits in which a section 2302(b)(8) claim was raised. Thus, it includes both the 58 OAA appeals adjudicated on the merits with a section 2302(b)(8) claim only, as well as the 17 OAA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 3. In FY 2017, there were no OAA appeals adjudicated on the merits in which a section 2302(b)(8) claim was raised and reprisal was not found because there was no personnel action; thus, this figure does not include a category for "Reprisal Not Found – No Personnel Action."

<sup>41</sup> This figure also includes a category of Miscellaneous Results, which represents OAA appeals that were adjudicated on the merits but wherein the section 2302(b)(8) claims in those cases were not adjudicated on the merits. An AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons. For example, an AJ may strike a reprisal claim as a sanction for an appellant's repeated failure to comply with the AJ's orders, or determine that the Board is precluded from considering the reprisal claim because a security clearance determination is at issue.



In any appeal involving a reprisal claim, the Board shall order corrective action for the reprisal claim if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

<b>Figure 5: Outcomes of Section 2302(b)(9) Claims in OAA Appeals Adjudicated on the Merits in the Regional and Field Offices</b>			
<b>Reprisal Found</b>	<b>Reprisal Not Found</b>	<b>Claim Withdrawn</b>	<b>Total</b>
0	21	1	22

Figure 5 depicts the resolution of section 2302(b)(9) claims within the 22 OAA appeals adjudicated on the merits in the regional and field offices.<sup>42</sup> While Figure 4 divides the outcomes of section 2302(b)(8) claims within OAA appeals adjudicated on the merits into

subcategories of ‘Reprisal Not Found’ (i.e., no contributing factor, no protected disclosure, and the agency would have taken the same action), Figure 5 displays the outcomes of section 2302(b)(9) claims within OAA appeals adjudicated on the merits only in the broader categories of ‘Reprisal Found’, ‘Reprisal Not Found’, and ‘Claim Withdrawn.’<sup>43</sup> As previously noted, the outcome of an *appeal* is separate from the outcome of a section 2302(b)(8) or (b)(9) *claim*.

Figure 6 breaks down the totals displayed in Figure 2 for IRA appeals by depicting the outcomes of those cases decided in the regional and field offices in which violations of section 2302(b)(8) and/or (b)(9) were alleged. In an IRA appeal, an appellant “shall seek corrective action from the Office of Special Counsel before seeking corrective action from the Board.”<sup>44</sup> If an IRA appeal is dismissed for “failure to exhaust” (i.e., because the appellant failed to first seek corrective action from OSC), the appellant can file a new IRA appeal after fulfilling the administrative exhaustion requirement. Figure 6 also includes IRA appeals that were dismissed without prejudice. Also, as in OAA appeals, cases are settled at the discretion of both parties. Settlement agreements consist of terms acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<b>Figure 6: Outcomes in IRA Appeals Decided in the Regional and Field Offices</b>							
<b>Type of Claim(s)</b>	<b>Dismissed, Without Prejudice</b>	<b>Settled</b>	<b>Withdrawn</b>	<b>Dismissed, Failure to Exhaust</b>	<b>Dismissed, Other Grounds</b>	<b>Adjudicated on Merits</b>	<b>Total</b>
Section 2302(b)(8) Only	67	98	37	67	127	69	465
Both section 2302(b)(8) & (b)(9)	12	13	4	14	32	34	109
Section 2302(b)(9) Only	0	0	0	0	6	2	8

<sup>42</sup> This figure displays the outcomes of all OAA appeals adjudicated on the merits in which a section 2302(b)(9) claim was raised. Thus, it includes the 5 OAA appeals adjudicated on the merits with a section 2302(b)(9) claim only and the 17 OAA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 3.

<sup>43</sup> Additionally, the ‘Reprisal Not Found’ category in Figure 5 includes OAA appeals in which the section 2302(b)(9) claim was not reached. As explained above with respect to Figure 4, an AJ may fully adjudicate an OAA appeal on the merits but not adjudicate the reprisal claim for a variety of reasons.

<sup>44</sup> 5 U.S.C. § 1214(a)(3).

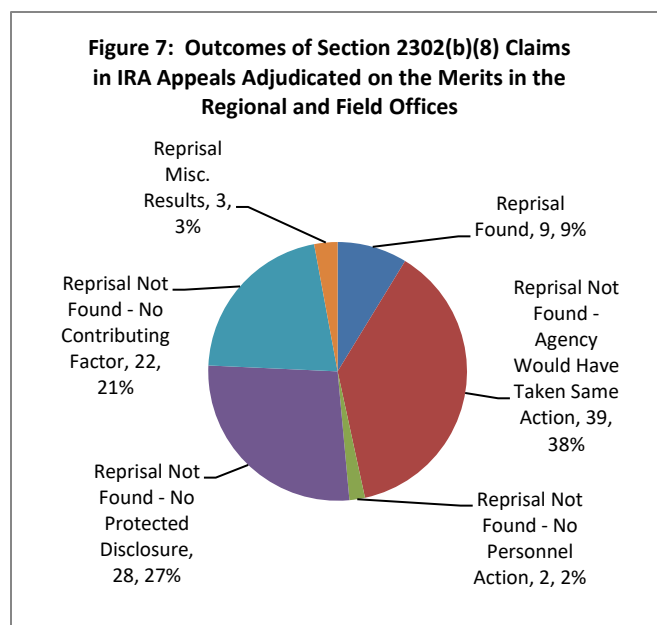


Figure 7 depicts the resolution of section 2302(b)(8) claims within the 103 IRA appeals adjudicated on the merits in the regional and field offices.<sup>45</sup> Just as in an OAA appeal, the Board shall order corrective action for the reprisal claim in an IRA appeal if the appellant has demonstrated that: (1) he or she made a protected disclosure; (2) the agency has taken or threatened to take a personnel action against him or her; and (3) his or her protected disclosure was a contributing factor in the personnel action. However, corrective action shall not be ordered if, after a finding that a protected disclosure was a contributing factor, the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

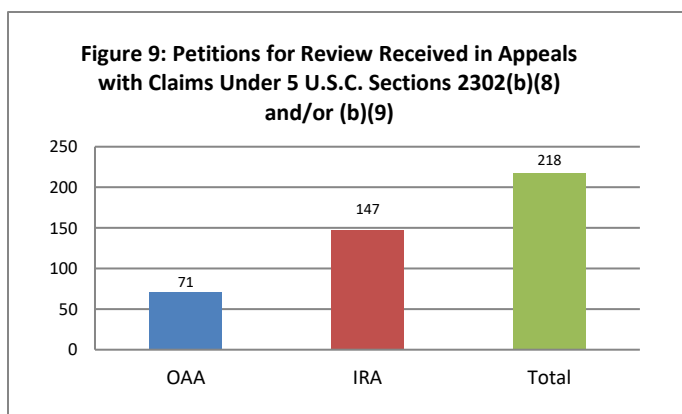
**Figure 8: Outcomes of Section 2302(b)(9) Claims in IRA Appeals Adjudicated on the Merits in the Regional and Field Offices**

Reprisal Found	Reprisal Not Found	Claim Withdrawn	Total
5	31	0	36

Figure 8 depicts the resolution of section 2302(b)(9) claims within the 36 IRA appeals adjudicated on the merits in the regional and field offices.<sup>46</sup> While Figure 7 divides the outcomes of section 2302(b)(8) claims within IRA appeals adjudicated on the merits into

subcategories of ‘Reprisal Not Found’ (i.e., no contributing factor, no protected disclosure, no personnel action, and the agency would have taken the same action), Figure 8 displays the outcomes of section 2302(b)(9) claims within IRA appeals adjudicated on the merits only in the broader categories of Reprisal Found, Reprisal Not Found, and Claim Withdrawn.<sup>47</sup>

An appellant who, or agency that, is dissatisfied with an AJ’s initial decision on an OAA or IRA appeal may file a PFR with the full Board at MSPB headquarters. Figure 9 shows the number of PFRs on initial appeals (both OAA and IRA appeals) the Board received involving section 2302(b)(8) and/or (b)(9) claims. Although MSPB has not had a quorum of Board members since January 8, 2017, and has not issued PFR decisions since that time, MSPB continues to receive, review, and draft proposed decisions on PFRs.



<sup>45</sup> This figure displays the outcomes of the 69 IRA appeals adjudicated on the merits with a section 2302(b)(8) claim only and the 34 IRA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 6.

<sup>46</sup> This figure displays the outcomes of the 2 IRA appeals adjudicated on the merits with a section 2302(b)(9) claim only and the 34 IRA appeals adjudicated on the merits with both section 2302(b)(8) and (b)(9) claims, as referenced in Figure 6.

<sup>47</sup> Additionally, the Corrective Action Not Ordered category in Figure 8 includes IRA appeals in which the section 2302(b)(9) claim was not reached.

Figure 10 shows the outcomes of PFR cases involving section 2302(b)(8) and/or (b)(9) claims. It is important to note that PFR outcomes are the decisions of the Board relative to the initial decision issued by the AJ, not relative to the initial action taken by the agency. Under 5 C.F.R. § 1201.115, the Board may issue a decision that denies or grants the PFR and affirms, reverses, or vacates, in whole or in part, the initial decision. Whether a PFR is denied or granted may have nothing to do with the reprisal claim. If the Board's decision is final, it will include an appropriate notice of appeal rights to the appellant. Alternatively, the Board may remand the appeal to the AJ for further proceedings, in which case the Board's decision is not yet final and no appeal rights are due. The Board vacates an initial decision when it issues a final decision that reaches a different outcome from that reached in the initial decision. This figure includes split vote orders issued by the Board during FY 2017 when MSPB had only two Board members. In a split vote order, the AJ's initial decision becomes the final decision of the MSPB because the two Board members cannot agree on the disposition of the

PFR.<sup>48</sup> Split vote orders issued by the Board are not considered as precedent in any future cases.

<b>Figure 10: Outcomes of Petitions for Review in Cases with Claims Under 5 U.S.C. Sections 2302(b)(8) and/or (b)(9)</b>							
<b>Settled</b>	<b>Dismissed</b>	<b>Affirmed</b>	<b>Remanded to Regional/Field Office</b>	<b>Reversed</b>	<b>Vacated</b>	<b>Split Vote</b>	<b>Total</b>
3	1	41	4	0	0	3	52

During FY 2017, the Board issued decisions on 52 PFRs of appeals that involved section 2302(b)(8) and/or (b)(9) claims. Four of these appeals were remanded. In OAA appeals, the scope of the remand may or may not pertain to the reprisal claim. Therefore, when a PFR in an OAA appeal is remanded to the regional or field office, it may present an opportunity for reprisal claims within the case to be re-evaluated. In IRA appeals, the only issue before the Board is whether a personnel action was taken in reprisal for engaging in protected activity. It is relatively rare for cases to settle after an initial decision has been issued and a party has subsequently filed a PFR. Settlements at the PFR level are voluntary and are reached at the discretion of the parties. The settlement agreements contain terms that are acceptable to both parties, thus the agreement resolves the dispute in a way that both parties achieve some positive result.

<sup>48</sup> Chairman Susan Tsui Grundmann departed the Board on January 7, 2017. Effective on January 8, 2017, Mark A. Robbins served as a single Board member and the Board has been unable to issue decisions at HQ, including decisions on PFR cases. Thus, in FY 2017, the Board issued significantly fewer decisions than in previous years. Member Robbins was designated as Vice Chairman by President Trump on January 21, 2017. He continues to serve as Vice Chairman and Acting Chairman with administrative authority for MSPB operations. His 7-year term will expire on March 1, 2018, but he will be eligible for a 1-year holdover pursuant to 5 U.S.C. § 1202.

## Appendix B: More Information about MSPB

### MSPB's Role, Functions, and Scope of Responsibilities

During Congressional hearings on the CSRA before it was passed in 1978, various Members of Congress testified and described the role and functions of MSPB stating that: “. . . [MSPB] will assume principal responsibility for safeguarding merit principles and employee rights” and be “charged with insuring adherence to merit principles and laws” and with “safeguarding the effective operation of the merit principles in practice.”<sup>49</sup> MSPB inherited Civil Service Commission (CSC) adjudication functions and provides due process to employees as an independent, third-party adjudicatory authority for employee appeals of adverse actions (such as removals, furloughs, and certain suspensions) and retirement decisions. For matters within its jurisdiction, MSPB was granted the statutory authority to develop its adjudicatory processes and procedures, issue subpoenas, call witnesses, and enforce compliance with MSPB decisions. Subsequent to the CSRA, Congress expanded MSPB's jurisdiction to hear appeals under a variety of other laws giving it broad authority over a wide range of appeals.<sup>50</sup> Congress also granted MSPB broad new authority to conduct independent, objective studies of the Federal merit systems and Federal human capital management issues to ensure employees are managed under the MSPs and free from PPPs. In addition, Congress granted MSPB the authority and responsibility to review the rules, regulations, and significant actions of OPM. Under various statutes, MSPB serves as an independent, third-party adjudicatory authority for over two million Federal civilian employees in almost every Federal department and agency, applicants for Federal civilian jobs, and certain U.S. Postal Service employees and uniformed military service members.<sup>51</sup>

Findings and recommendations from MSPB's merit systems studies help to strengthen merit and improve public management and administration in the Federal executive branch. Although MSPB's studies are focused on the Federal workforce and merit systems, they generally are applicable to the management of Federal legislative branch and judicial branch employees and even to public employees at the state and local levels. Through its authority to review and act on OPM rules, regulations, and significant actions, MSPB protects the merit systems and helps ensure that Federal employees are managed in adherence with the MSPs and free from PPPs. This broad authority includes employees in all agencies for which OPM sets policy, beyond the specific individual employees who may file appeals to MSPB. MSPB's customers, partners, and stakeholders include a wide range of policy-makers; Federal agencies and councils; Federal employees and managers and groups that represent them; appellants, appellant representatives, and agency representatives; professional legal groups, academia, and management research organizations; and good Government groups.

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<sup>49</sup> Legislative History of the Civil Service Reform Act of 1978. Committee on Post Office and Civil Service, House of Representatives, March 27, 1979, Volume No. 2 (pages 5-6).

<sup>50</sup> Beyond those included in 5 U.S.C. chapters 43 and 75, and all those set out at 5 C.F.R. Part 1201.3; the Federal Employee Retirement System (FERS) Act of 1986, 5 U.S.C. § 8461(e), enacted by Pub. L. 99-335, title I, § 101, 100 Stat. 571 (1986); the Uniformed Services Employment and Reemployment Rights Act (USERRA), Pub. L. 103-353, codified at 38 U.S.C. §§ 4301-4335; whistleblower appeals including IRA appeals involving personnel actions listed in 5 C.F.R. § 1209.4(a) and otherwise appealable actions are listed in 5 C.F.R. §§ 1201.3 (a)(1) through (a)(19), and as amended by the WPEA (Pub. L. 112-199); the Hatch Act Modernization Act of 2012; the AWP, Pub. L. [115-41](#), enacted on June 23, 2017; the Follow the Rules Act (Pub. L. [115-40](#)), enacted on June 14, 2017; the authority for a single Board member to extend OSC stay requests (Pub. L. [115-42](#)); and most recently the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Pub. L. [115-73](#), enacted on October 26, 2017).

<sup>51</sup> This includes most Federal employees under title 5 U.S.C. and others such as certain Veterans Health Administration employees pursuant to 38 U.S.C. § 7403(f)(3) and RIF actions affecting a career or career candidate appointee in the Foreign Service pursuant to 22 U.S.C. § 4010a.

## MSPB Offices and Their Functions

MSPB is headquartered in Washington, D.C. and has six regional and two field offices located throughout the United States. The agency is currently authorized to employ 235 FTEs to conduct and support its statutory duties.

The **Board Members**, including the Chairman, Vice Chairman, and Board Member, are appointed by the President, confirmed by the Senate, and serve overlapping, nonrenewable 7-year terms. No more than two of the three Board Members can be from the same political party. The Board Members adjudicate the cases brought to the Board. The Chairman, by statute, is the chief executive and administrative officer. The Office Directors report to the Chairman through the Executive Director.

The **Office of the Administrative Law Judge (ALJ)** adjudicates and issues initial decisions in corrective and disciplinary action complaints (including Hatch Act complaints) brought by the Special Counsel, proposed agency actions against ALJs, MSPB employee appeals, and other cases assigned by MSPB. The functions of this office are currently performed by ALJs at the Federal Trade Commission, the Coast Guard, and the Environmental Protection Agency under interagency agreements.

The **Office of Appeals Counsel** conducts legal research and prepares proposed decisions for the Board to consider for cases in which a party files a PFR of an initial decision issued by an AJ and in most other cases decided by the Board. The office prepares proposed decisions on interlocutory appeals of AJ rulings, makes recommendations on reopening cases on the Board's own motion, and provides research, policy memoranda, and advice to the Board on legal issues.

The **Office of the Clerk of the Board** receives and processes cases filed at MSPB headquarters (HQ), rules on certain procedural matters, and issues Board decisions and orders. It serves as MSPB's public information center, coordinates media relations, operates MSPB's library and on-line information services, and administers the Freedom of Information Act (FOIA) and Privacy Act programs. It also certifies official records to the courts and Federal administrative agencies, and manages MSPB's records systems, website content, and the Government in the Sunshine Act program.

The **Office of Equal Employment Opportunity** plans, implements, and evaluates MSPB's equal employment opportunity programs. It processes complaints of alleged discrimination brought by agency employees and provides advice and assistance on affirmative employment initiatives to MSPB's managers and supervisors.

The **Office of Financial and Administrative Management** administers MSPB's budget, accounting, travel, time and attendance, human resources, procurement, property management, physical security, and general services functions. It develops and coordinates internal management programs, including review of agency internal controls. It also administers the agency's servicing agreements with the U.S. Department of Agriculture, National Finance Center (NFC) for payroll services, U.S. Department of the Treasury, Bureau of the Fiscal Services (BFS) for accounting services, and USDA's Animal and Plant Health Inspection Service (APHIS) for human resources services.

The **Office of the General Counsel**, as legal counsel to MSPB, advises the Board and MSPB offices on a wide range of legal matters arising from day-to-day operations. The office represents MSPB in litigation; coordinates the review of OPM rules and regulations; prepares proposed decisions for the Board to enforce a final MSPB decision or order, in response to requests to review OPM regulations, and for other assigned cases; conducts the agency's PFR settlement program; and



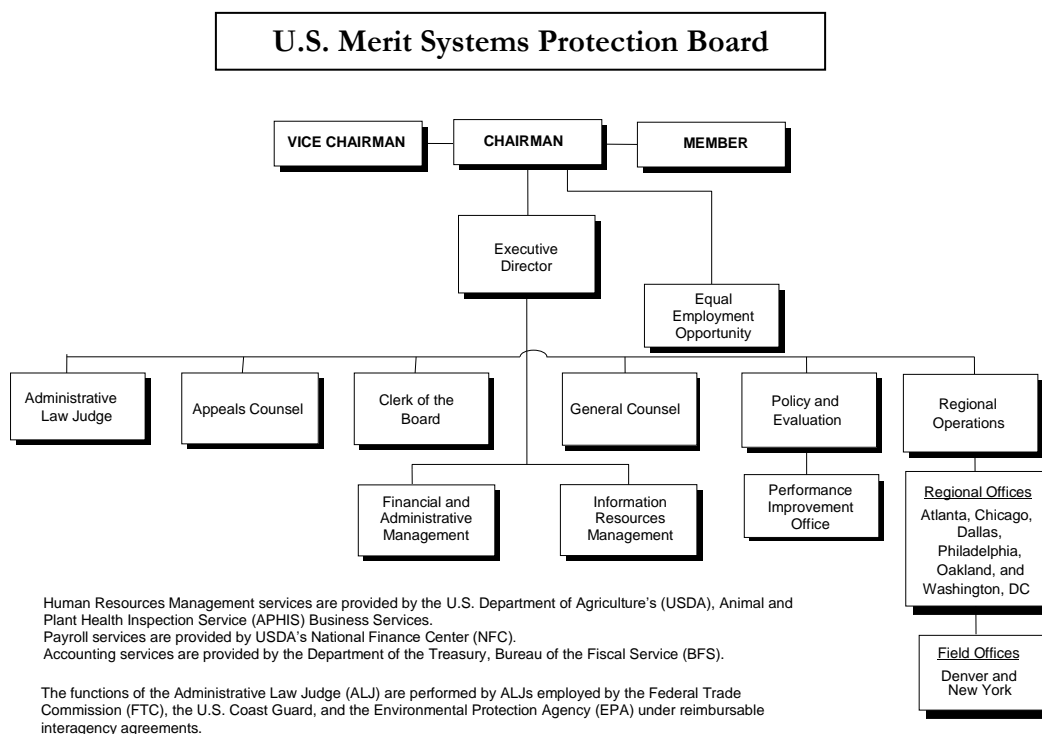
coordinates the agency's legislative policy and congressional relations functions. The office also drafts regulations, conducts MSPB's ethics program, performs the Inspector General function, and plans and directs audits and investigations.

The **Office of Information Resources Management** develops, implements, and maintains MSPB's automated information systems to help MSPB manage its caseload efficiently and carry out its administrative and research responsibilities.

The **Office of Policy and Evaluation** carries out MSPB's statutory responsibility to conduct special studies of the civil service and other Federal merit systems. Reports of these studies are sent to the President and the Congress and are distributed to an international audience. The office provides information and advice to Federal agencies on issues that have been the subject of MSPB studies. The office also carries out MSPB's statutory responsibility to review and report on the significant actions of OPM. The office conducts special projects and program evaluations for MSPB and has responsibility for preparing MSPB's strategic and performance plans and performance reports required by the GPRA Modernization Act of 2010.

The **Office of Regional Operations** oversees the agency's six regional and two field offices, which receive and process appeals and related cases. It also manages MSPB's Mediation Appeals Program (MAP). AJs in the regional and field offices are responsible for adjudicating assigned cases and for issuing fair, well-reasoned, and timely initial decisions.

## MSPB Organizational Chart



## How MSPB Brings Value to the Merit Systems, the Federal Workforce, and the Public

The Federal merit systems are based on widely accepted organizational management practices and values that have been developed and reinforced through historical experience. There are costs and benefits associated with merit-based management of the Federal workforce. Ensuring merit system

values such as fairness in all personnel matters; hiring and advancement based on qualifications and performance; protection from arbitrary personnel decisions, undue partisan political influence, and reprisal; and assurance of due process, incurs necessary costs (e.g., in time and effort) that are not comparable to the private sector. For example, the Federal Government may require more time and effort to fill a Federal job than a private employer as a result of: (1) requirements for public notice of vacancies to support the merit principle of fair and open competition to attain a workforce from all segments of society; (2) fair and rigorous assessment of applicants consistent with the merit principles of equal opportunity and selection based on relative ability; and (3) review and documentation of applicant eligibility and entitlements in compliance with laws and public policies such as those relating to veterans' preference and the disabled. These processes improve the overall quality of the workforce and help ensure that Federal jobs and job protections are provided to the most highly qualified applicants. This, in turn, helps reduce the likelihood that the Government will need to undertake the process to remove employees in the future. These management costs are necessary to ensure the ultimate goal of a strong, highly qualified, stable merit-based civil service that serves in the public's interest over the long term, rather than at the pleasure of current political leaders.

Despite our relatively small size and budget, MSPB provides enormous value to the Federal workforce, Federal agencies, and to the American taxpayer by helping to ensure a more effective and efficient merit-based civil service that provides better service to the public. MSPB adds value by providing superior adjudication services, including alternative dispute resolution, which ensure due process and result in decisions that are based in law, regulation, and legal precedent and not on arbitrary or subjective factors. MSPB's adjudication process is guided by reason and legal analysis, which are hallmarks of both our legal system and our merit system. The quality of MSPB's decisions is evidenced by the high affirmance rate of its decisions by the courts. Centralized adjudication of appeals by a neutral, independent third party improves the fairness and consistency of the process and resulting decisions and is more efficient than separate adjudication of appeals by each agency. The body of legal precedent generated through adjudication and the transparency and openness of the adjudication process provide guidance to agencies and employees on proper behavior and the ramifications of improper behavior. This adjudication information, shared through outreach, our regulations, and extensive material on our website, improves the long-term effectiveness and efficiency of the civil service and supports better adherence to MSPs and prevention of PPPs. This adjudication information also improves the effectiveness and efficiency of the adjudication process by helping the parties understand the law and learn how to prepare thorough and legally sound cases. Strong enforcement of MSPB decisions ensures timely, effective resolution of current disputes and encourages more timely compliance with future MSPB decisions.

MSPB's high-quality, objective merit systems studies provide value by identifying and assessing innovative and effective merit-based management policies and practices and recommending improvements. For example, MSPB studies have shown that improved hiring and selection, improved merit-based management, and greater employee engagement lead to a highly qualified Federal workforce, improved organizational performance, and better service to the public. Results, findings, and recommendations from MSPB's merit systems studies function are shared through reports, newsletters, online flash articles posted to our website and through outreach. A recent MSPB report provides information on and dispels misconceptions about due process in the civil service, which is useful to policy-makers, managers, legal practitioners, and other stakeholders. Effective management processes also help reduce the occurrence and costs of PPPs, which negatively affect agency and employee performance. Review of OPM's significant actions, rules, and regulations protects the integrity and viability of the civil service and merit systems and provides benefits similar to those related to merit systems studies. Better merit-based management helps improve employee and agency performance. It also logically leads to less



employee misconduct and fewer adverse actions, which reduces costs in terms of fewer PPPs and fewer unsubstantiated appeals. This provides indirect value to the American taxpayer in decreased Governmentwide costs and confidence that the Government is doing its job well and appropriately managing its workforce.

## **The Merit System Principles and Prohibited Personnel Practices**

The CSRA codified for the first time the values of the merit systems as the MSPs and delineated specific actions and personnel practices that were prohibited (PPPs) because they were contrary to merit system values.<sup>52</sup> The MSPs include the values of: fair and open competition for positions with equal opportunity to achieve a workforce from all segments of society; merit-based selection for jobs; advancement and retention based on qualifications and job performance; fair and equitable treatment in all aspects of management; equal pay for work of equal value; and training that improves organizational and individual performance. The MSPs also include: protection from arbitrary action, favoritism, or coercion for political purposes; and protection against reprisal for lawful disclosure of violations of law and waste, fraud, and abuse. The principles further state that the workforce should be used effectively and efficiently and that all employees should maintain high standards of integrity, conduct, and concern for the public interest.

The PPPs state that employees shall NOT take or influence others to take personnel actions that: discriminate for or against an individual or applicant on the bases of race, color, religion, sex, national origin, age, disabling (handicapping) condition, marital status, or political affiliation; consider information beyond the person's qualifications, performance, or suitability for public service; or coerce political activity or commit reprisal for refusal to engage in political activity. These actions also may not: deceive or willfully obstruct an individual's rights to compete for employment; influence a person to withdraw from competition to affect the prospects of another; or grant preference beyond that provided by law. The actions also may not be: based on or create nepotism; in retaliation or reprisal for whistleblowing—the lawful disclosure of a violation of law, rule or regulation, gross mismanagement or gross waste of funds, abuse of authority, or danger to public health or safety; in retaliation or reprisal for an employee's exercise of his or her rights and legal protections; or based on past conduct that does not adversely affect the job. The actions also must not: knowingly violate veterans' preference requirements; violate the MSPs; or implement or enforce a nondisclosure policy, form, or agreement, which lacks a specific statement that its provisions are consistent with and do not supersede applicable statutory whistleblower protections. On October 26, 2017, Congress created a fourteenth PPP, which prohibits access of medical records as part of, or to further, any conduct related to, any other PPP.<sup>53</sup>

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<sup>52</sup> 5 U.S.C. § 2301 and § 2302, respectively.

<sup>53</sup> The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, Pub. L. [115-73](#), amends 5 U.S.C. § 2302(b) to add “(14) access to the medical records of another employee or applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).”

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## **Appendix C: Information Required under 5 U.S.C. § 7701(i)(1) and (2)**

In accordance with 5 U.S.C. § 7701(i)(1) and (2), MSPB provides FY 2017 case processing information. In FY 2017, MSPB processed 9,756 total cases (not including ALJ and original jurisdiction cases at HQ). Sixty two percent of initial appeals (including addendum) were processed in 110 days or less (66 percent in 120 days or less). Therefore, 38 percent of initial appeals took over 110 days to process, 33 percent took over 120 days to process.

Due to the lack of a quorum from early January 2017 to the end of September 2017, MSPB issued only slightly more than one-quarter's worth of the PFR decisions for the year. Because of these unique circumstances, reporting on only the HQ cases that were closed in FY 2017 would be a misleading representation of the work MSPB did to process HQ cases. Therefore, we will not report timeliness information for processing PFR cases at HQ.

In general, each case is adjudicated on its merits consistent with law and legal precedent and in a manner consistent with the interest of fairness, which is achieved by assuring due process and the parties' full participation at all stages of the appeal. Under normal circumstances, several factors contribute to the length of time it takes to resolve a particular case. It takes time to issue notices, respond to discovery and other motions, subpoena documents, and people, hold conferences with the parties, arrange for and question witnesses, present evidence, conduct hearings, and often, to participate in ADR efforts. When there is good cause to do so, the parties may be granted additional time in an effort to preserve due process. Adjudication also may require more time when cases involve new or particularly complex legal issues, numerous factual issues, or the interpretation of new statutory or regulatory provisions. In addition, when Board Members (assuming a quorum exists) do not agree about the disposition of PFR issues or cases, the need to resolve disagreements or prepare separate opinions may increase the time needed for adjudication. Additional factors that affect processing time are discussed above in the performance results section of this APR-APP.



## List of Common Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AJ	Administrative Judge
APR-APP	Annual Performance Report and Annual Performance Plan
ATO	Authority to Operate (usually refers to operating an IT system)
CB	Clerk of the Board
CEU	Continuing Education Units
CIO	Chief Information Officer
CLE	Continuing Legal Education
CMS/LM	Case Management System/Law Manager
COOP	Continuity of Operations Plan
CSC	Civil Service Commission
CSRA	Civil Service Reform Act of 1978
CSRS	Civil Service Retirement System
DMS	MSPB's Document Management System
DOI	Department of Interior
DWOP	Dismissal Without Prejudice
ED	Executive Director
e-FOIA	Electronic Freedom of Information Act system
EHRI	Enterprise Human Resource Integration
FERS	Federal Employees' Retirement System
FEVS	Federal Employee Viewpoint Survey
FLRA	Federal Labor Relations Authority
FTE	Full-time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GC	General Counsel
GPRA	Government Performance and Results Act
GPRAMA	GPRA Modernization Act of 2010
GS	General Schedule
GSA	General Services Administration
HC	Human Capital
HR	Human Resources
HQ	Headquarters
<i>IoM</i>	<i>Issues of Merit</i> newsletter
IRA	Individual Right of Action (type of whistleblower appeal)
IS	Internal Survey
IT	Information Technology
ITTG	Information Technology Testing Group
MAP	Mediation Appeals Program

MPS	Merit Principles Survey
MSP	Merit System Principles
NDAA	National Defense Authorization Act
OAA	Otherwise Appealable Action
OEEEO	Office of Equal Employment Opportunity
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PFR	Petition for Review of an Initial Decision
PIO	Performance Improvement Officer
PPP	Prohibited Personnel Practices
RFI	Request for Information
RFQ	Request for Quote
RIF	Reduction-in-Force
SES	Senior Executive Service
SLA	Service Level Agreement
TBD	To be determined
USERRA	Uniformed Services Employment and Reemployment Rights Act
VA	Department of Veterans Affairs
VEOA	Veterans Employment Opportunity Act
VERA	Voluntary Early Retirement Authority
VSIP	Voluntary Separation Incentive Plan
WPA	Whistleblower Protection Act of 1989
WPEA	Whistleblower Protection Enhancement Act of 2012



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